IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 19964 of 2015 (U)

PETITIONER(S):

HAJI C. UMMER KOYA,
AGED 60, S/O.SYEDALI, UMRAZ MANZIL
PUTHIYAPALAM, CHALAPPURAM POST, KOZHIKODE - 673 002.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)

RESPONDENT(S):
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1. THE COMMISSIONER OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM - 695 001.

2. THE DEPUTY COMMISSIONER (APPEALS),
   DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE - 673 001.

3. THE INTELLIGENCE OFFICER,
   SQUAD NO.III, COMMERCIAL TAXES, KOZHIKODE - 673 001.

4. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
   TALUK OFFICE, KOZHIKODE - 673 001.

BY SR.GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 19964 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE PHOTOCOPY OF THE SHOP INSPECTION REPORT DATED 08-01-2002 PREPARED BY RESPONDENT NO.3

EXHIBIT P2 : TRUE PHOTOCOPY OF THE PROCEEDINGS OF RESPONDENT NO.3 BEARING ORDER NO TCR 37/01-02 DATED 27-02-2004

EXHIBIT P3 : TRUE PHTOOCOPY OF THE PROCEEDINGS BEARING ORDER NO .TCR 37/2001-02 DATED 31-08-2004.,OF RESPONDENT NO.3

EXHIBIT P4 : TRUE PHOTOCOPY OF THE PROCEEDINGS BEARING ORDER NO STRP-199/2004 DATED 29-08-2005 PASSED BY THE DEPUTY COMMISSIONER,KOZHIKODE,THE REVISIONAL AUTHORITY

EXHIBIT P5 : TRUE PHOTOCOPY OF THE PROCEEDINGS OF RESPONDENT NO.1, BEARING ORDER NO.R3.52078/05/LT DATED 03.02.2006

EXHIBIT P6 : TRUE PHOTOCOPY OF THE ORDER OF ASSESSMENT BEARING NO A-2084/04 (2001-02) DATED 30-11-2005 PASSED BY THE COMMERCIAL TAX OFFICER,IIIRD CIRCLE,KOZHIKODE

EXHIBIT P7 : TRUE PHOTOCOPY OF THE ORDER DATED 10-02-2010 IN TRIBUNAL APPEAL NO 321 OF 2008 ON THE FILE OF THE KERALA SALES TAX APPELLATE TRIBUNAL,ADDITIONAL BENCH,KOZHIKODE

EXHIBIT P8 : TRUE PHOTOCOPY OF THE JUDGMENT DATED 01-07-2013 IN WPC NO 6501 OF 2006 PASSED BY THIS HON'BLE COURT

EXHIBIT P9: TRUE PHOCOPY OF THE PROCEEDINGS OF THE COMMERCIAL TAX OFFICER(3RD CIRCLTE), COMMERCIAL TAXES,KOZHIKODE ,ORDER BEARING NO.A- 2084/2001-02 DATED 02-02-2015

EXHIBIT P10 : TRUE PHOTOCOPY OF THE APPEAL DATED 19-03-2015

EXHIBIT P11 : TRUE PHOTOCOPY OF THE STAY PETITION FILED IN APPEAL DATED 19-03-2015

EXHIBIT P12 TRUE PHOTOCOPY OF THE REVENUE RECOVERY NOTICE BEARING NO COLLECTORATE FILE NO 2015/14556/11 DATED 18-05-2015

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE.

dlk

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 19964 of 2015

Dated this the 3rd day of July, 2015

J U D G M E N T

Petitioner impugning the assessment order, approached the appellant authority. Ext.P10 is the appeal. The petitioner also moved Ext.P11 stay application. In the meanwhile, the petitioner was served with demand notice and revenue recovery notice.

2. The facts appears to be very peculiar and has a chequered history of litigation. The petitioner disputes very liability to pay tax. Petitioner's case is that, the petitioner is not a dealer or assessee.

3. The issue now arising out of a proceedings based on inspection made by respondent No.3 in the premises of M/s.Indian Handloom Expo on 08.01.2002. Petitioner's case is that, he has nothing do with M/s.Indian Handloom Expo. He was only a Pandal Contractor and he had erected Pandal on behalf of the land owner.

4. Petitioner points out demand in penalty proceedings and stay granted by the Division Bench of this Court till disposal of the penalty proceedings. Petitioner submits that, in the light of the Division Bench direction, the appellate authority may be directed to dispose of the appeal and the recovery

proceedings shall be deferred till the disposal of the appeal.

5. The learned Government Pleader opposes the prayer of the petitioner and submits that, the petitioner already suffered the assessment order after full fledged hearing and assessing authority being satisfied with the fact that the petitioner was the dealer in respect of exhibition conducted under the name M/s.Indian Handloom Expo cannot therefore wriggle out of liability.

6. I am of the view that, the issue of liability of the petitioner has to be decided finally through the proceedings under KGST Act and, therefore interest of justice demand absolute stay till the disposal of the appeal. The appeal also therefore requires expeditious disposal.

7. Accordingly, there shall be direction to the 2nd respondent to dispose the appeal within three months after notice to the petitioner. Till the disposal of the appeal, the recovery shall be deferred.

The writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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