IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 20407 of 2015 (A)

PETITIONER:

P.M. ABDUL JABBAR,
PROPRIETOR, LAMIYA SILKS, PERINJANAM,
THRISSUR DISTRICT.

BY ADVS.SRI.K.N.SREEKUMARAN,
SRI.P.D.UNNIKKANNAN NAIR,
SMT.V.P.SEENA DEVI.

RESPONDENTS:
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1. COMMERCIAL TAX OFFICER,
KODUNGALLUR- 680 664.

2. ASSISTANT COMMISSIONER (APPEALS),
COMMERCIAL TAXES, THRISSUR -688 001.

3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, IRINJALAKUDA- 680 121.

BY SR. GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

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

rs.

WP(C).No. 20407 of 2015 (A)

APPENDIX

PETITIONER'S EXHIBITS:-

P1:- TRUE COPY OF THE ASSESSMENT ORDER FOR 2012-13 DATED 29/12/2013 ISSUED BY THE IST RESPONDENT.

P2:- TRUE COPY OF THE APPEAL DATED 24/01/2015 AGAINST EXT P1 FILED BY PETITIONER BEFORE 2ND RESPONDENT ON 30/01/2015.

P2(A):-TRUE COPY OF THE STAY APPLICATION FILED IN EXT P2 APPEAL BEFORE 2ND RESPONDENT ON 30/01/2015.

P2(B):-TRUE COPY OF THE EARLY APPLICATION FILED IN EXT P2 APPEAL BEFORE 2ND RESPONDENT ON 30/01/2015.

P3:- TRUE COPY OF THE DEMAND NOTICE BEARING NO.A2 2682/2014- 15 DATED 16/02/2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

P4:- TRUE COPY OF THE JUDGMENT IN WP(C).NO.5624/2015 DATED 23/02/2015 FILED BY THE PETITIONER.

P5:- TRUE COPY OF THE STAY ORDER ISSUED BY THE 2ND RESPONDENT PER ORDER NO KVATA. 38/15 DATED 22/05/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.20407 of 2015

Dated this the 7th day of July, 2015

J U D G M E N T

The petitioner impugning conditional order passed by the appellate authority in the stay application has approached this Court.

2. The case of the petitioner is that, the impugned order does not contain the objections of the petitioner as well as the ground on which the appeal has been preferred. It is further submitted that, if the main contentions have been adverted, the appellate authority would not have imposed any condition for staying the operation of the assessment order.

3. The impugned order is an elaborated speaking order and the ground on which the condition imposed was also referred in the order itself. The sustainability of the contentions of the petitioner necessarily has to be adverted in final hearing of the matter and not at the step of granting a stay. The *prima facie* case has been adverted by the authority and found that, there was justification for entertaining the matter to decide the issue. But the condition was imposed only after adverting to the demand as well as the nature of contentions put forward in the appeal.

4. This Court cannot be justified in upsetting such condition imposed by the appellate authority. Therefore, the challenge against the condition imposed is rejected.

5. However, the learned counsel for the petitioner submits that, the condition imposed is too onerous to comply with, which may have an impact upon the business of the petitioner.

6. Considering the above facts and circumstances, the condition is modified to the tune of ₹10 lakhs. The petitioner shall remit the above amount in two equal monthly installments starting from 25.07.2015. The petitioner shall abide by all other conditions in the impugned order. The authority is directed to dispose of the appeal within a period of four months from the date of receipt of a copy of this judgment, after notice to the petitioner.

This writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV