IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 21242 of 2015 (E)

PETITIONER(S) :

K.M. SEENA,
PROPRIETRIX, SUPER PACKAGING, MSPX/93,
PATHIRAPALLY, ALAPPUZHA - 688 521.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS.

RESPONDENT(S):

1. THE AGRICULTURAL INCOME TAX AND COMMERCIAL TAX OFFICER,
   COMMERCIAL TAX OFFICER,
   ALAPPUZHA - 688 011.

2. THE DEPUTY COMMISSIONER(APPEALS)
   COMMERCIAL TAXES, ASRAMOM,
   KOLLAM - 691 002.

3. THE DEPUTY TAHSILDAR(RR),
   AMBALAPPUZHA TALUK,
   ALAPPUZHA - 688 001.

BY SENIOR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT. P1:- TRUE COPY OF ANNUAL RETURN FOR 2013-14 DTD 8/6/2014 E-FILED BY PETITIONER.

EXT. P2:- TRUE COPY OF FORM 18B CERTIFICATE OF AUDIT DTD 6/6/2014 ISSUED BY IST RESPONDENT TO PETITIONER.

EXT. P3:- TRUE COPY OF PRE-ASSESSMENT NOTICE DTD 1/7/2014 FOR THE YEAR 2013-14 ISSUED BY IST RESPONDENT TO PETITIONER.

EXT. P4:- TRUE COPY OF REPLY ALONG WITH EVIDENCES DTD 27/7/2014 FILED BEFORE THE 2ND RESPONDENT AGAINST EXT P3 NOTICE.

EXT. P5:- TRUE COPY OF ASSESSMENT ORDER FOR 13-14 DTD 19/9/2014 ISSUED BY IST RESPONDENT TO PETITIONER.

EXT. P6:- TRUE COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT IN WPC NO 5580/2015 DTD 2/3/2015.

EXT. P7:- TRUE COPY OF RR NOTICES DTD 9/2/2015 ISSUED U/S.7 & 34 OF THE RR ACT BY 3RD RESPONDENT TO THE PETITIONER.

EXT. P8:- TRUE COPY OF APPEAL FILED U/S.55 OF KVAT ACT FOR 13-14 AGAINST EXT P5 ASSESSMENT ORDER ON 21/3/2015 BEFORE 2ND RESPONDENT.

EXT. P9:- TRUE COPY OF THE STAY ORDER KVATA (ALPY)187/15 DTD 15/6/2015 ISSUED BY 2ND RESPONDENT PURSUANT TO EXT P5 ASSESSMENT.

EXT. P10:- TRUE COPY OF COMMON REPLY DTD 20/5/2015 FILED BEFORE IST RESPONDENT AGAINST PRE-ASSESSMENT NOTICE ISSUED U/S25(1)AND U/S.67(1) OF THE KVAT ACT FOR 2014-15.

EXT. P11:- TRUE COPY OF ASSESSMENT ORDER PASSED U/S.25(1)OF THE KVAT ACT FOR 14-15 ON 25/06/15.

EXT. P12:- TRUE COPY OF PENALTY ORDER PASSED U/S.25(3) OF KVAT ACT FR 14-15 ON 25/6/2015.

EXT. P13:- TRUE COPY OF NOTICE DTD NIL ISSUED BY IST RESPONDENT PROPOSING TO CANCEL KVAT CERTIFICATE OF REGISTRATION TO THE PETITIONER RECEIVED ON 30/6/2015.

EXT. 14:- TRUE COPY OF STRONG OBJECTION LETTER DTD 1/7/2015 FILED BY PETITIONER AND DULY ACKNOWLEDGED BY IST RESPONDENT

RESPONDENT(S)' EXHIBITS :

NIL. /TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.21242 of 2015

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Dated this the 15th day of July, 2015

JUDGMENT

The petitioner, impugning conditional order of stay passed in the appeal, has approached this Court. According to the petitioner, the order impugned is a non-speaking order without adverting to the petitioner's contention. The petitioner submits that the assessment is resulted on account of the non-verification of the books of accounts and disallowance of the input tax credit. In fact, the petitioner has challenged the assessment before this Court in W.P.(C) No.5580/2015 and this Court after hearing the petitioner, this Court was the view that the petitioner should avail statutory remedy by way of an appeal. Accordingly, the petitioner has preferred the appeal. The impugned order is produced as Ext.P9.

2. I have gone through the appellate order. The Appellate Authority, in fact, had considered the petitioner's contention and held that the condition should be imposed for granting stay. I do not find any infirmity with the order and the same was passed after meritorious consideration of the appeal.

3. The petitioner submits that he is unable to raise the entire amount. Taking note of that, the conditional order is modified on payment of Rs.60,000/- within one month.

4. The petitioner has a further grievance against Ext.P11 assessment order and Ext.P12 penalty order for the year 2014-2015. The petitioner also challenges Ext.P3 notice proposing to cancel certificate of registration. The main grievance of the petitioner is that he was not given an opportunity to produce books of accounts for the year 2014-2015.

5. This Court is of the view that the Authority ought to have given sufficient opportunity to the petitioner to produce books of accounts for the year 2014-2015.

In that view of the matter, Exts.P11 and P12 orders are set aside. The petitioner shall appear before the first respondent along with all books of accounts on 17.8.2015 at 11.a.m. In view of the above direction, Ext.P13 shall not be given effect.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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