IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 21982 of 2015 (W)

PETITIONER :

SRI.SHAJAN JOSEPH (MG.PARTNER), AGED 48 YEARS,
M/S.BHARAT GLASS HOUSE, DIVYA COMPLEX, VYTTILA
COCHIN-682019.

BY ADV. SRI.K.J.VINCENT (MUNDAMVELI)

RESPONDENTS :

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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT, TRIVANDRUM-695001.

2. THE ASST: COMMISSIONER,
   SPECIAL CIRCLE III, C.T.COMPLEX, COCHIN-682015.

3. THE DEPUTY COMMISSIONER(APPEALS),
   DEPARTMENT OF COMMERCIAL TAXES, C.T. COMPLEX
   COCHIN-682015.

4. THE INSPECTING ASST:COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES, CIVIL STATION
   KAKKANAD, COCHIN-682020.

R1 TO R4 BY SENIOR GOVERNMENT PLEADER
SMT. SHOBA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 21982 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE MONTHLY RETURN FOR 12/2014 BEARING NO.320704/WR01/6856/2014 DATED 18-2-2015 FILED BY THE PETITIONER.

P2: TRUE COPY OF ORDER NO.3207417355/2014-15/DECEMBER 2014 DATED 9-2-2015 OF THE ASST. COMMISSIONER,SPECIAL CIRCLE II,EKM.

P3: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER DATED 28TH APRIL 2015 BEFORE THE THIRD RESPONDENT

P4: TRUE COPY OF THE EARLY HEARING PETITION DATED 28-4-2015 FILED BEFORE THE THIRD RESPONDENT

P5: TRUE COPY OF THE DEMAND NOTICE SERVED ON THE PETITIONER DATED 10-4-2015 BY THE FOURTH RESPONDENT.

P6: TRUE COPY OF THE STAY ORDER PASSED IN KVATA NO;1029/2015 DATED 27-6-2015 BY THE THIRD RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.21982 of 2015

Dated this the 22nd day of July, 2015

J U D G M E N T

The petitioner impugning conditional order passed in the stay application filed along with an appeal has approached this Court.

2. The petitioner did not file the monthly return for December 2014 and not remitted tax thereon. Therefore the assessing authority completed the assessment under Section 22 of the KVAT Act. The same was challenged in the appeal.

3. It appears that the petitioner thereafter field a return and according to the petitioner, he is only liable to pay tax less than ₹ 2,000/-. It is submitted that, therefore the condition imposed in the stay order to deposit an amount of ₹1,50,000/- is too exorbitant.

4. The merit of the petitioner's contentions necessarily has to be adverted by the appellate authority at the time of final hearing. The assessing authority completed the assessment for the reason that, the petitioner did not file the return within time. In fact the petitioner claimed IPT credit of ₹1,94,000/-. The petitioner's claim for IPT credit can be only adverted by the appellate authority while final hearing in the appeal. Therefore, there is no infirmity with the conditional order passed by the appellate authority. However, taking note of the facts and circumstances, this Court is of the view that, the condition imposed in the impugned order has to be

modified.

5. Accordingly, the petitioner shall deposit an amount of ₹75,000/- within three weeks from today. The petitioner shall abide by all other conditions in the stay order. The appellate authority is directed to dispose of the appeal within a period of four months, after notice to the petitioner.

This writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

AV