IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 22768 of 2015 (U)

PETITIONER :

M/S.RIBIS HEALTH CARE PVT. LTD.,
DR.FRANKLINS PANCHAKARMA INSTITUTE AND RESEARCH CENTRE,
CHOWARA.P.O., THIRUVANANTHAPURAM,
REPRESENTED BY MANAGING DIRECTOR, DR.SONY J.P.,
AGED 43 YEARS, S/O.JOSEPH,
RESIDING AT KOLLAMPARAMBIL HOUSE,
PERUMPAZHUTHOOR.P.O., NEYYATTINKARA-695 126.

BY DR.K.B.MUHAMED KUTTY,SENIOR ADVOCATE
ADVS. SMT.M.SHAJNA
SRI.S.KANNAN
SRI.K.M.FIROZ

RESPONDENT(S):
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1. INTELLIGENCE OFFICER (INVESTIGATION BRANCH)-1,
OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER (INTELLIGENCE),
DEPARTMENT OF COMMERCIAL TAXES, TAX TOWERS, 5TH FLOOR,
KARAMANA.P.O., THIRUVANANTHAPURAM. PIN-695 001.

2. THE DEPUTY COMMISSIONER (APPEALS),
THIRUVANANTHAPURAM. PIN-695 001.

3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, NEYYATTINKARA. PIN-695 026.

4. THE SALES TAX OFFICER (ENQUIRY)-1,
LUXURY TAX, OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, THIRUVANANTHAPURAM. PIN-695 001.

BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 22768 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- A TRUE COPY OF THE ORDER DATED 13.3.2014 PASSED BY THE 4TH RESPONDENT.

P2- A TRUE COPY OF THE LICENSE DATED 20.2.1998 ISSUED BY THE KOTTUKAL GRAMA PANCHAYAT.

P2(A)- A TRUE COPY OF THE LICENSE DATED 1.7.2004 ISSUED BY THE KOTTUKAL GRAMA PANCHAYAT.

P2(B)- A TRUE COPY OF THE LICENSE DATED 19.4.2006 ISSUED BY THE KOTTUKAL GRAMA PANCHAYAT.

P3- A TRUE COPY OF THE CONSENT TO OPERATE ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD, TRIVANDRUM.

P4- A TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF TRADE MARK DATED 3.11.2006 ISSUED BY REGISTRAR OF TRADE MARKS, GOVERNMENT OF INDIA.

P5- A TRUE COPY OF THE PENALTY ORDER DATED 19.5.2014 FOR THE YEAR 2005-06 PASSED BY THE 1ST RESPONDENT.

P6- A TRUE COPY OF THE PENALTY ORDER DATED 19.5.2014 FOR THE YEAR 2006-07 PASSED BY THE 1ST RESPONDENT.

P7- A TRUE COPY OF THE PANALTY ORDER DATED 19.5.2014 FOR THE YEAR 2007-08 PASSED BY THE 1ST RESPONDENT.

P8- A TRUE COPY OF THE ORDER DATED 30.9.2014 PASSED BY THE 2ND RESPONDENT.

P9- A TRUE COPY OF THE JUDGMENT IN W.P[C]NO.1845 OF 2015(E) DATED 20/1/2015

P10- A TRUE COPY OF THE STAY ORDER DATED 23.4.2015 PASSED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 22768 of 2015

Dated this the 28th day of July, 2015

J U D G M E N T

The petitioner has approached this Court impugning the conditional order passed in a revision petition under the Luxury Tax Act based on the penalty order.

2. Petitioner had approached this Court earlier challenging the conditional order in the stay application. This Court directed the appellate authority to reconsider the matter after assigning reason. It was accordingly that Ext.P10 order is passed. It is as seen from the impugned order itself that, the reasons have been assigned for imposing condition.

3. The learned Senior counsel appearing for the petitioner submits that, a larger question to be decided in the appeal is whether the hospital would come within the ambit of luxury tax. Petitioner submits they are running an Ayurvedic Hospital therefore it will not come within the ambit of Luxury Tax Act. It is further submitted that when there is a dispute with regard to the liability, the penalty proceedings are illegal. Therefore it is contended that the condition imposed is unsustainable.

4. As seen from the impugned order that, the total disputed amount is ₹97,70,650/- for the years 2005-06, 2006-07 & 2007-08 and 30% would come around ₹32 lakhs. Petitioner submits that, it is too onerous to comply with and it will adversely effect their business.

5. This Court do not find any infirmity with the conditional order imposed by the appellate authority while exercising the jurisdiction for granting stay.

6. However, taking note of the issue involved in this case, this Court is of the view that, the condition is to be modified as payment of ₹9 lakhs within 3 weeks from today. The petitioner shall comply with all other conditions.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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