IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 25970 of 2015 (U)

PETITIONER(S):

M/S.KUNNATH PHARMACEUTICALS
DOOR A.NO.VII/791 (318 A & B)
MUDAVOOR P.O.MUVATTUPUZHA 686 669 REPRESENTED
BY ITS PROPRIETOR
MR.ABRAHAM K.C.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.RAJA KANNAN

RESPONDENT(S):

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1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. THE ASSISTANT COMMISSIONER - I
COMMERCIAL TAXES, SPECIAL CIRCLE
PERUMBAVOOR - 683 542.

3. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, ERNAKULAM - 682 016.

4. THE DEPUTY TAHSILDAR (RR)
TALUK OFFICE, MUVATTUPUZHA - 686 669.

R1-R4 BY ADV. SUDHEESH KUMAR, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 25970 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: **COPY OF THE ASSESSMENT ORDER DATED 22.1.2015 PASSED BY THE 2ND RESPONDENT PERTAINING TO YEAR 2010-11 UNDER THE KVAT ACT.**

EXT.P-2: **COPY OF THE APPEAL MEMORANDUM (WITHOUT ANNEXURES) DATED 17.3.2015 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT AGAINST EXT.P1 ORDER**

EXT.P-3: **COPY OF THE STAY PETITION DATED 17.3.2015 FILED BY THE PETITIONER ALONG WITH EXT.P2 APPEAL (WITHOUT ANNEXURES)**

EXT.P-4: **COPY OF THE JUDGEMENT DATED 2.7.2013 IN WA 937/2013**

EXT.P-5: **COPY OF THE COMPUTATION OF TURNOVER ASSESSED AND THE TAX DUE PERTAINING TO THE YEAR 2010 - 11.**

EXT.P-6: **COPY OF THE STAY ORDER DATED 29.7.2015 PASSED BY THE 3RD RESPONDENT FOR THE YEAR 2010 - 11 UNDER THE KVAT ACT.**

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A.TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.25970 of 2015

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Dated this the 08th day of October, 2015

JUDGMENT

The petitioner, who is an assessee under the 2nd respondent, has filed this writ petition seeking a writ of certiorari to quash Ext.P6 conditional order of stay issued by the 3rd respondent and seeking a declaration that it is entitled for an absolute stay against Ext.P1 order in the facts and circumstances of the case and in the light of Ext.P4 judgment of a Division Bench of this Court.

2. By order dated 21.08.2015, this Court granted an interim stay against recovery, for a period of two weeks, which order of stay was extended from time to time.

3. As directed by this Court, the learned Senior Government Pleader has filed a bifurcation statement alongwith a memo dated 11.09.2015. On receipt of the aforesaid statement, the learned counsel for the petitioner has filed a detailed head-wise computation of turnover and tax impact for the financial year 2010-11, alongwith a statement dated

16.09.2015. Thereafter, the learned Senior Government Pleader has filed another bifurcation statement, alongwith memo dated 01.10.2015 as per which the total tax due comes to Rs.12,38,504/-.

4. I heard arguments of the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

5. It is mainly relying on Ext.P4 judgment of a Division Bench of this Court in Writ Appeal No.937/2014, the learned counsel for the petitioner is contending that the petitioner is entitled for an unconditional stay. A reading of the aforesaid judgment would show that the judgment was with respect to the sales turnover of 'Musli Power X'tra'. In the aforesaid judgment, a Division Bench of this Court came to a prima facie conclusion that the product in question falls within the entry relating to Ayurvedic drugs. It was in such circumstances, this Court granted an unconditional stay for the aforesaid assessment year.

6. But in the case on hand, as can be seen from the head-wise bifurcation statement filed by both sides for the assessment year 2010-11 the sales turnover is not exclusively that of Musli Power X'tra. Therefore, merely relying on Ext.P4 judgment, the

petitioner cannot contend that it is entitled for an unconditional stay from the 3rd respondent, during the pendency of Ext.P2 appeal.

Therefore, considering the facts and circumstances of the case, I deem it appropriate to direct the petitioner to deposit a sum of Rupees Eight lakhs in two equal installments. The first installment shall be paid on or before 21.10.2015 and the second installment shall be paid on or before 21.11.2015. If the petitioner is complying with the aforesaid conditions, all recovery proceedings pursuant to Ext.P1 order shall be kept in abeyance till disposal of Ext.P2 appeal by the 3rd respondent. Ext.P6 order of the 3rd respondent is modified to that extent.

The writ petition is disposed of as above. No order as to costs.

SD/-
ANIL K. NARENDRAN,
JUDGE

JV