

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 26378 of 2015 (V)

PETITIONER(S):

**BIJU ABRAHAM,
ERANATTU AGENCIES, VALLICHIRA, PULIYANNOOR,
KOTTAYAM, PIN - 686 574.**

BY ADV. SRI.V.V.GEORGEKUTTY

RESPONDENT(S):

- 1. COMMERCIAL TAX OFFICER,
PALA - 686 004.**
- 2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOTTAYAM - 686 001.**
- 3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, PALA - 686 004.**

BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

P1- SAMPLE COPY OF THE FORM 8 H INVOICE OF THE PETITIONER FOR 2010-11.

**P1(A)- SAMPLE COPY OF THE FORM 8 H INVOICE OF THE PETITIONER FOR
2011-2012.**

P1(B)-SAMPLE COPY OF THE FORM 8 H INVOICE OF THE PETITIONER FOR 2012-2013.

**P2- SAMPLE COPY OF THE PURCHASE INVOICES UPLOADED RELATED TO
JUNE 2011 BY THE PETITIONER.**

**P3- REVISED ASSESSMENT FOR 2010-2011 DATED 30.9.2014 ISSUED BY THE
1ST RESPONDENT.**

**P3(A)- REVISED ASSESSMENT FOR 2011-12 DATED 28.10.2014 ISSUED BY THE
1ST RESPONDENT.**

**P3(B)- REVISED ASSESSMENT FOR 2012-2013 DATED 24.1.2015 ISSUED BY THE
1ST RESPONDENT.**

P4- TRUE COPY OF THE APPEAL MEMORANDUM FOR 2010-2011.

P4(A)-TRUE COPY OF THE APPEAL MEMORANDUM FOR 2011-2012.

P4(B)- TRUE COPY OF THE APPEAL MEMORANDUM FOR 2012-2013.

P5- TRUE COPY OF STAY PETITION FOR 2011-2012.

P5(A)- TRUE COPY OF STAY PETITION FOR 2012-2013.

**P6- TRUE COPY OF APPELLATE ORDER FOR 2010-2011 DATED 5.7.2015 ISSUED BY
THE 2ND RESPONDENT.**

**P7- TRUE COPY OF THE COMMON STAY ORDER FOR 2011-2012 AND 2012-2013
DATED 3.8.2015 ISSUED BY THE 2ND RESPONDENT.**

**P8- TRUE COPY FO THE MODIFIED ORDER FOR 2010-2011 DATED 24.8.2015 ISSUED
BY THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 26378 of 2015

Dated this the 7th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 conditional order of stay that was passed by the 2nd respondent in appeals preferred by the petitioner against an order of assessment under the Kerala Value Added Tax Act, for the assessment years 2011-12 and 2012-13. By the said order, the 2nd respondent directed the petitioner to pay 30% of the demand confirmed against him and to furnish adequate security to the satisfaction of the assessing authority for the balance amount within two weeks from receipt of the order as a condition for grant of stay against the recovery of balance amount confirmed against him. It is a case of the petitioner in the writ petition that, while passing Ext.P7 order, the 2nd respondent did not exercise his discretion validly.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in Ext.P7 order, the 2nd respondent relies primarily on the fact that the

petitioner had not produced any evidence before him to substantiate his contentions on merit. In the absence of any document produced by the petitioner to substantiate his contention, the 2nd respondent cannot be faulted for having passed a conditional order of stay. Thus, I do not see any reason to interfere with Ext.P7 order passed by the 2nd respondent in the stay application preferred by the petitioner. The challenge in the writ petition against Ext.P7 order, therefore fails and is accordingly dismissed.

The learned counsel for the petitioner seeks some time to comply with the direction in Ext.P7 order. Taking into account the plea of financial hardship projected on behalf of the petitioner, I permit the petitioner to comply with the directions in Ext.P7 order on or before 30.09.2015. The respondent shall, while insisting on payments from the petitioner, also adjust any excess amounts paid by the petitioner as evidenced by Ext.P8, if the same is available for adjustment, towards the demand in Ext.P7 order that is now confirmed by this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE