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. 26824 of 2015 (C)

PETITIONER(S):

M/S. BEST TRADING COMPANY
EDAMUTTAM, THRISSUR, REPRESENTED BY ITS PROPRIETOR
P.K.JALEEL.

BY ADVS.SMT.S.K.DEVI
SRI.M.RAJ MOHAN

RESPONDENT(S):

1. THE ASSISTANT COMMISSIONER
(ASSMT) -3, DEPT. OF COMMERCIAL TAXES
SPL. CIRCLE, THRISSUR 680 003.

2. THE DEPUTY COMMISSIONER (APPEALS)
DEPT. OF COMMERCIAL TAXES, ERNAKULAM 682 015.

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:

WP(C).No. 26824 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE ORDER NO.32081145704/2009-10 DATED 17.6.15 ISSUED BY THE IST RESPONDENT.

EXHIBIT P2. COPY OF THE APPEAL DATED 3.8.15.

EXHIBIT P3. COPY OF THE STAY ORDER NO.KVAT 1647/2015 DATED 7.8.15.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.26824 of 2015

....

Dated this the 7th day of September, 2015

J U D G M E N T

Challenge in the writ petition is against Ext.P3 conditional order of stay passed in an appeal preferred by the petitioner against an order confirming an assessment for the year 2009-2010 under the Kerala Value Added Tax Act. The challenge in the writ petition is against Ext.3 order, the 2nd respondent appellate authority while passing the said order did not exercise his discretion validly.

2. I have heard the learned counsel for the petitioner and also the learned Government Pleader 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.P3, the 2nd respondent appellate authority has adverted to the contention of the petitioner with regard to the taxability of the amounts received by way of incentives. The 2nd respondent finds that, the contentions advanced by the learned counsel involved a verification with regard to subsequent receipt of incentive/discount which could be ascertained only at a later point in time. It was under those circumstances that,

the appellate authority directed the petitioner to remit 30% of the demand confirmed against him as a condition for the grant of stay of recovery of balance amounts. I do not find Ext P3 order to be vitiated by an erroneous exercise of discretion, and hence, there is no necessity to interfere with the said order in these proceedings under Article 226 of the Constitution of India. The writ petition in its challenge against Ext.P3 order is therefore dismissed.

The learned counsel for the petitioner would submit that, the petitioner would require some time to comply with the directions in Ext.P3 order. Taking note of the said submission with regard to financial hardship urged on behalf of the petitioner, I extend the time for compliance with the directions in Ext.P3 order till 30.09.2015. Save for this limited modification, the writ petition in its challenge against Ext.P3 order is otherwise dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns