IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(C).No. 26913 of 2015 (L)

PETITIONER(S):

M/S.LITTLE FLOWER TRADERS,
VP I/543, MAIN ROAD, VADAKKANCHERY,
PALAKKAD DISTRICT-678 683,
REPRESENTED BY ITS MANAGING PARTNER,
SRI.JAISON MATHEW.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S) :

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1. COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, ALATHUR, PALAKKAD DISTRICT-678 541.

2. ASSISTANT COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, PALAKKAD-678 001.

3. INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, CHITOOR, PALAKKAD DISTRICT-678 101.

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 26913 of 2015 (L)
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APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT-P1: TRUE COPY OF BEST JUDGMENT ASSESSMENT ORDER AND DEMAND NOTICE DATED 30.03.2015 FOR THE YEAR 2012-13 COMPLETED BY 1ST RESPONDENT, ON THE BASIS OF SCRUTINY OF RETURNS WITH KVATIS DATA.

EXHIBIT-P2: TRUE COPY OF ASSESSMENT ORDER AND DEMAND NOTICE DATED 05.05.2015 FOR THE YEAR 2012-13 COMPLETED BY 1ST RESPONDENT, DISALLOWING INPUT TAX AVAILED ON CAPITAL GOODS.

EXHIBIT-P3: TRUE COPY OF APPEAL DATED 18.07.2015, SUBMITTED BY PETITIONER BEFORE 2ND RESPONDENT, AGAINST EXT P1 ASSESSMENT.

EXHIBIT-P4: TRUE COPY OF APPEAL DATED 18.07.2015, SUBMITTED BY PETITIONER BEFORE 2ND RESPONDENT, AGAINST EXT.P2 ASSESSMENT.

EXHIBIT-P5: TRUE COPY OF STAY PETITION DATED 18.07.2015 SUBMITTED ALONG WITH EXT P3 APPEAL, BEFORE 2ND RESPONDENT.

EXHIBIT-P6: TRUE COPY OF STAY PETITION DATED 18.07.2015 SUBMITTED ALONG WITH EXT.P4 APPEAL, BEFORE 2ND RESPONDENT.

EXHIBIT-P7: TRUE COPY OF MECHANICAL CONDITIONAL STAY ORDER DATED 06.08.2015 ISSUED TO PETITIONER BY 2ND RESPONDENT IN EXT P5 STAY PETITION, DIRECTING TO SATISFY 40% OF EXT P1 DEMAND, WITHOUT CONSIDERING ANY OF MY CONTENTIONS RAISED.

EXHIBIT-P8: TRUE COPY OF MECHANICAL CONDITIONAL STAY ORDER DATED 06.08.2015 ISSUED TO PETITIONER BY 2ND RESPONDENT IN EXT P6 STAY PETITION, DIRECTING TO SATISFY 50 % OF DEMAND MADE IN EXT P2 ORDER, WITHOUT PROPER CONSIDERATION TO THE CONTENTIONS RAISED.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26913 of 2015

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Dated this the 8th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P7 and P8 conditional orders of stay, that were passed by the 2nd respondent in appeals preferred by the petitioner against the assessment orders for the assessment year 2012-2013. The challenge in the writ petition against Exts.P7 and P8 orders is that the 2nd respondent, while considering the stay petition preferred by the petitioner, did not exercise his discretion properly.

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 does not furnish any reason as to why the petitioner was required to pay 40% of the balance tax amount as a condition for the grant of stay against recovery of the amounts confirmed against the petitioner by orders of the lower authority. This Court has held in Archana Agencies v. Commercial Tax Officer **[2014(2) KLT 715]** that an authority considering a stay petition is

bound to give reasons even while granting conditional stay. I, therefore, quash Ext.P7 order and direct the 2nd respondent is directed to reconsider the matter and pass fresh orders in the stay petition filed by the petitioner, within one month from the date of receipt of a copy of this judgment after affording an opportunity of hearing to the petitioner. Recovery steps, initiated against the petitioner shall be kept in abeyance till such time as fresh orders are passed by the 2nd respondent, as directed above, and communicated to the petitioner.

4. As regards Ext.P8 order, which is also impugned in the writ petition, I find that the 2nd respondent, while exercising his discretion and passing the stay order, has adverted to the contention of the petitioner with regard to the apportionment of input tax towards taxable goods and non-taxable goods, and he has dis-regarded only that portion of the input tax, as is prima facie relatable to non-taxable goods. It is accordingly, that he directed the petitioner to pay 50% of the tax amount as a condition for the grant of stay in Ext.P8 order. On going through the said order, I see no reason to interfere with the same in these proceedings under Article 226 of the Constitution of India.

Accordingly, in respect of Ext.P8 order, I grant the petitioner time till 30.09.2015 to comply with the directions in Ext.P8 order. The writ petition in its challenge against Ext.P8 order, therefore, fails, save for the limited modification in respect of the time granted to the petitioner for effecting compliance with the directions in Ext.P8.

The writ petition is therefore partly allowed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das