IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).No. 27515 of 2015 (L)

PETITIONER:

RAJAKRISHNAN.S,
PROP.RATNA WHOLESALE TEXTILE DEALELR,
MAIN ROAD, KOLLAM.

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR
SMT.V.P.SEENA DEVI

RESPONDENT(S):
----

1. COMMERCIAL TAX OFFICER,
   3RD CIRCLE, KOLLAM - 691 001.

2. DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, KOLLAM - 691 001.

3. INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, KOLLAM - 691 001.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 27515 of 2015 (L)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : TRUE COPY OF THE ASSESSMENT ORDER DATED 14.8.2014 FOR APRIL 2014 ISSUED BY THE 1ST RESPONDENT.

EXT. P2 : TRUE COPY OF THE ASSESSMENT ORDER DATED 14.8.2014 FOR MAY 2014 ISSUED BY THE 1ST RESPONDENT.

EXT. P3 : TRUE COPY OF THE ASSESSMENT ORDER DATED 14.10.2014 FOR JUNE 2014 ISSUED BY THE 1ST RESPONDENT.

EXT. P4 : TRUE COPY OF THE ASSESSMENT ORDER DATED 9.1.2015 FOR JULY 2014 ISSUED BY THE 1ST RESPONDENT.

EXT. P5 : TRUE COPY OF THE ASSESSMENT ORDER DATED 9.1.2015 FOR AUGUST 2014 ISSUED BY THE 1ST RESPONDENT.

EXT. P6 : TRUE COPY OF THE ASSESSMENT ORDER DATED 09.1.2015 FOR SEPTEMBER 2014 ISSUED BY THE 1ST RESPONDENT.

EXT. P7 : TRUE COPY OOF THE ASSESSMENT ORDER DATED 9.1.2015 FOR OCTOBER 2014 ISSUED BY THE 1ST RESPONDENT.

EXT. P8 : TRUE COPY OF THE APPEAL FILED AGAINST EXT. P1 FOR 4/2014 BEFORE THE 2ND RESPONDENT.

EXT.P8(A): TRUE COPY OF THE STAY APPLICATION FILED IN EXT.P8 APPEAL BEFORE THE 2ND RESPONDENT.

EXT. P9 : TRUE COPY OF THE APPEAL FILED AGAINST EXT. P2 FOR 5/2014 BEFORE THE 2ND RESPONDENT.

EXT. P9(A) : TRUE COPY OF THE STAY APPLICATION FILED IN EXT. P9 APPEAL BEFORE THE 2ND RESPONDENT.

EXT. P10 : TRUE COPY OF THE APPEAL FILED AGAINST EXT. P3 FOR 6/2014 BEFORE THE 2ND RESPONDENT.

EXT. P10(A) : TRUE COPY OF THE STAY APPLICATION FILED IN EXT. P10 APPEAL BEFORE THE 2ND RESPONDENT.

EXT. P11 : TRUE COPY OF THE APPEAL FILED AGAINST EXT. P4 FOR 7/2014 BEFORE THE 2ND RESPONDENT.

EXT. P11(A) : TRUE COPY OF THE STAY APPLICATION FILED IN EXT. P11 APPEAL BEFORE THE 2ND RESPONDENT.

EXT. P12 : TRUE COPY OF THE APPEAL FILED AGAINST EXT. P5 FOR 8/2014 BEFORE THE 2ND RESPONDENT.

WP(C).No. 27515 of 2015 (L)

EXT. P12(A) : TRUE COPY OF THE STAY APPLICATION FILED IN EXT. P12 APPEAL BEFORE THE 2ND RESPONDENT.

EXT. P13 : TRUE COPY OF THE APPEAL FILED AGAINST EXT. P6 FOR 9/2014 BEFORE THE 2ND RESPONDENT.

EXT. P13A) : TRUE COPY OF THE STAY APPLICATION FILED IN EXT. P12 APPEAL BEFORE THE 2ND RESPONDENT.

EXT. P14 : TRUE COPY OF THE APPEAL FILED AGAINST EXT. P7 FOR 10/2014 BEFORE THE 2ND RESPONDENT.

EXT. P14A) : TRUE COPY OF THE STAY APPLICATION FILED IN EXT. P13 APPEAL BEFORE THE 2ND RESPONDENT.

EXT. P15: TRUE COPY OF THE COVERING LETTER DATED 10.11.2014 FOR PAYMENT OF 30% TAX AND BOND FOR 4/2014.

EXT. P16 : TRUE COPY OF THE SECURITY BOND IN FORM 6 FOR 4/2014.

EXT. P17 : TRUE COPY OF THE COVERING LETTER DATED 10.11.2014 FOR PAYMENT OF 30% TAX AND BOND FOR 5/2014.

EXT. P18: TRUE COPY OF THE COVERING LETTER DATED 10.11.2014 FOR PAYMENT OF 30% TAX AND BOND FOR 6/2014.

EXT. P19 : TRUE COPY OF THE COVERING LETTER DATED 27.3.2015 FOR PAYMENT OF 30% TAX AND BOND FOR 7 & 8/2014.

EXT. P20 : TRUE COPY OF THE COVERING LETTER DATED 01.6.2015 FOR PAYMENT OF 30% TAX AND BOND FOR 9 & 10/2014.

EXT. P21 : TRUE COPY OF THE STAY ORDER BEARING NO.KVATA (KLM) 965/14, 966/14, 967/14, 403/15, 404/15, 405/15 AND 406/14 DATED 11.8.2015 OF THE 2ND RESPONDENT.

EXT. P22 : TRUE COPY OF THE DEMAND NOTICE IN FORM I BEARING NO.RRC 7/15-16 DATED 4.6.2015 OF THE 3RD RESPONDENT.

EXT. P23 : TRUE COPY OF THE JUDGMENT DATED 28.7.2015 IN WP(C)22726 OF THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C).No.27515 of 2015

...

Dated this the 11th day of September, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P21 order passed by the 2nd respondent in an appeal filed by the petitioner against an assessment to turnover tax under Section 6A of the Kerala Value Added Tax Act. By Ext.P21 order, the 2nd respondent has dismissed the stay petition preferred by the petitioner and directed the petitioner to pay the entire amount covered by the assessment orders during the pendency of the appeal. In the writ petition, the challenge against Ext.P21 order is premised on the contention that, the 2nd respondent ought to have taken note of the fact that, the petitioner has paid 30% of amounts confirmed against him by the assessment order and limited the payment at the interim stage to only the said 30% which was contemplated under the Kerala Value Added Tax Act.

2. I have heard the learned counsel for the petitioner and 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 force in the contention of the learned counsel for the petitioner that, the 2nd respondent appellate authority ought to have considered the payment, of 30% of the tax confirmed against the assessee, at the time of considering the stay petition and granted a conditional stay requiring the assessee to pay only 30% as a condition for hearing the appeal itself. I also note that, a similar stand has been taken by this Court in the judgment dated 18.07.2015 in W.P(C) No.22726 of 2015. Accordingly, I quash Ext.P21 order and direct the 2nd respondent to consider and pass orders on the appeals preferred by the petitioner without insisting on any further amount by way of payment of tax as a condition for hearing the appeal.

The writ petition is disposed of as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns