IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).NO. 28572 OF 2015 (V)

PETITIONER(S):

M/S.TROPICAL PLANTATIONS LTD.
TELEGRAPH ROAD, KOTTAYAM,
REPRESENTED BY ITS DIRECTOR, MR.P.T.THOMAS

BY ADVS.SRI.RAMESH CHERIAN JOHN
SRI.JOJO ISAAC NEYYARAPALLY

RESPONDENT(S):

1. THE INSPECTING ASSISTANT COMMISSIONER
OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER
DEPARTMENT OF COMMERCIAL TAXES
KOTTAYAM,PIN-686001

2. THE DEPUTY COMMISSIONER (APPEALS) II
COMMERCIAL TAXES
KOTTAYAM,PIN-686001

BY GOVERNMENT PLEADER SMT.K.T.LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 28572 OF 2015 (V)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE NOTICE U/S 39(5) OF THE ACT DATED 17.11.2014 ISSUED BY THE 1ST RESPONDENT

EXT.P2: TRUE COPY OF THE OBJECTIONS DATED 04.12.2014 FILED BY THE PETITIONER

EXT.P3: TRUE COPY OF THE NOTICE DATED 06.12.2014 ISSUED BY THE 1ST RESPONDENT

EXT.P4: TRUE COPY OF THE REPLY DATED 16.12.2014 FILED BY THE PETITIONER

EXT.P5: TRUE COPY OF THE NOTICE DATED 17.12.2014 ISSUED BY THE 1ST RESPONDENT

EXT.P6: TRUE COPY OF THE LETTER DATED 22.12.2014 FILED BY THE PETITIONER

EXT.P6A: TRUE COPY OF THE NOTICE DATED 23.12.2014 ISSUED BY THE 1ST RESPONDENT POSTING THE HEARING ON 24.12.2014 AT 10.15 AM

EXT.P6B: TRUE COPY OF THE REPLY DT.24.12.2014 TO EXT.P6A NOTICE

EXT.P6C: TRUE COPY OF THE LETTER DATED 24.12.2014 UNDER COVER OF WHICH EXT.6B WAS FILED BY THE PETITIONER

EXT.6D: TRUE COPY OF THE ACKNOWLEDGMENT CARD IN RESPECT OF EXT.P6B & EXT.P6C SERVED ON THE 1ST RESPONDENT

EXT.P7: TRUE COPY OF THE ORDER OF ASSESSMENT DATED 24.12.2014 PASSED UNDER SECTION 39 OF THE ACT BY THE 1ST RESPONDENT

EXT.P8: TRUE COPY OF THE FORM OF APPEAL AND GROUNDS OF APPEAL FILED BY THE PETITIONER

EXT.P9:TRUE COPY OF THE INTERLOCUTORY APPLICATION DATED 14.01.2015 ALONG WITH GROUNDS OF APPLICATION FOR STAY FILED BY THE PETITIONER

EXT.P10: TRUE COPY OF THE LETTER DATED 31.10.2015 FILED BY THE PETITIONER

EXT.P11: TRUE COPY OF THE ORDER DATED 05.02.2015 PASSED BY THE 2ND RESPONDENT DIRECTING THE PETITIONER TO REMIT 40% OF THE AMOUNT DEMANDED AS PER THE DEMAND NOTICE AND TO FURNISH ADEQUATE SECURITY FOR THE REMAINING AMOUNT TO THE SATISFACTION OF THE ASSESSING AUTHORITY WITHIN 2 WEEKS FROM THE DATE OF RECEIPT OF THE ORDER.

EXT.P12: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC(CIVIL) NO.6799 OF 2015 DATED 04.03.2015 QUASHING EXT.P11 ORDER OF THE 2ND RESPONDENT

EXT.P13: TRUE COPY OF THE WRITTEN SUBMISSIONS DATED 14.07.2015 FILED BY THE AUTHORISED REPRESENTATIVE OF THE PETITIONER

EXT.P14:TRUE COPY OF THE ORDER DT.06.08.2015 PASSED BY THE 2ND RESPONDENT DIRECTING THE PETITIONER TO PAY 30% OF THE DEMAND AND TO FURNISH ADEQUATE SECURITY FOR THE BALANCE PURSUANT TO EXT.P12 JUDGMENT

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.28572 of 2015

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Dated this the 22nd day of September, 2015

<u>J U D G M E N T</u>

The challenge in the writ petition is against Ext.P14 conditional order of stay passed by the 2nd respondent in an appeal preferred by the petitioner against an assessment order under the Agricultural Income Tax Act. I note from the averments in the writ petition that against a similar order passed on an earlier occasion, the petitioner had approached this Court through W.P(C).No.6799 of 2015 and on that occasion by Ext.P12 judgment, this Court had quashed the order passed by the 2nd respondent, on the ground that, it did not state reasons as to why the petitioner was required to deposit the amount as a condition for grant of stay. The matter was therefore remanded to the 2nd respondent for a fresh consideration of the stay petition within the time stipulated in the judgment. Ext.P14 order is now passed by the 2nd respondent pursuant to the directions in Ext.P12 judgment. On a reading of Ext.P14 order, I find that, apart from stating the contentions of the petitioner and referring to the reasons on the basis of which the Assessing Officer had confirmed the demand against the petitioner, there is no independent reason furnished by the 2nd respondent to support the finding that the petitioner was required to pay 30% of the demand confirmed against him by the assessment order as a condition for grant of stay for recovery of the balance amounts pending disposal of the appeal. I find that the 2nd respondent has yet again failed to exercise his discretion validly in accordance with the judgment of this Court in **Archana Agencies v Commercial Tax Officer - 2014 (2) KLT 715** .

Resultantly, I quash Ext.P14 order and direct the 2nd respondent to consider and pass orders on the appeal itself within a period of two months from the date of receipt of a copy of this judgment. I make it clear that, recovery steps for recovery of the amounts confirmed against the petitioner by Ext.P7 assessment order shall be kept in abeyance till such time as orders are passed by the 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns