IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 29323 of 2015 (M)
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PETITIONER(S):

SUNILKUMAR, AGED 39 YEARS,
S/O.SUDHAKARAN, PARTNER, M/S.YESEM BUILDERS,
KARUNAGAPPALLY, KOLLAM-690101,
RESIDING AT CHIRAKKARA HOUSE, PATTOOR P.O.,
NOORUNAD, ALAPPUZHA-690504.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENT(S):
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1. **THE DEPUTY COMMISSIONER (APPEALS),**
   KOLLAM-691001.

2. **THE COMMERCIAL TAX OFFICER,**
   WORKS CONTRACT, KOLLAM-691001.

3. **S.MADANAN PILLAI, S/O.SREEDHARAN PILLAI,**
   GREESHMAM, KOIVILA P.O., KOLLAM-691590.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 29323 of 2015 (M)
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APPENDIX

PETITIONERS' EXHIBITS

P1: COPY OF THE ORDER OF THE R2 DATED 15/12/14

P2: COPY OF THE APPEAL FILED BEFORE THE R1 BY CHALLENGING EXT.P1 ORDER DATED 27/7/15

P3: COPY OF THE APPLICATION FOR THE EARLY DISPOSAL OF THE APPEAL DATED 27/7/15

P4: COPY OF THE ORDER OF THE R1 IN KVAT A(KLA) NO.545/15 DATED 28/7/15.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 29323 of 2015
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Dated this the 29th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 conditional order of stay, that was passed by the 1st respondent in an appeal preferred by the petitioner against Ext.P1 order of assessment under the Kerala Value Added Tax Act, hereinafter referred to as the "KVAT Act", for the assessment year 2011-2012. The challenge in the writ petition against Ext.P4 is essentially that, while passing Ext.P4 order the 1st respondent did not exercise its discretion validly.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the official 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.P4 order, the 1st respondent has considered the legal contentions put forth by the petitioner in the appeal memorandum as also in the stay petition, and given reasons as to why the rate of tax that was fixed by the assessing officer was legally justified. It is also mentioned in Ext.P4 order that, other than for the averments

contained in the memorandum of appeal, the petitioner did not produce any evidence to substantiate his contentions at the time of hearing before the 1st respondent. In that view of the matter, I see no reason to interfere with the findings of the 1st respondent in Ext.P4 order. The writ petition in its challenge against Ext.P4 order, therefore, fails and is accordingly, dismissed.

The learned counsel appearing for the petitioner would seek some time for complying with the directions in Ext.P4 order of the 1st respondent. Taking into account the plea of financial hardship urged on behalf of the petitioner, I grant the petitioner time up to 15.10.2015 for complying with the directions in Ext.P4 order of the 1st respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das