IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 30801 of 2015 (A)

PETITIONER(S):

M/S.AUTO GAS ENERGY INDIA LTD.,RAVIPURAM,COCHIN,
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR.ABEL JAYAPRAKASH.

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD

RESPONDENT(S):
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1. DEPUTY COMMISSIONER (APPEALS), ERNAKULAM-682 016.

2. DEPUTY COMMISSIONER (APPEALS) II, ERNAKULAM-682016.

3. INTELLIGENCE OFFICER, SQUAD NO.III, COMMERCIAL TAXES, ERNAKULAM-682016.

4. ASSISTANT COMMISSIONER (ASSESSMENT,SPECIALR CIRCLE-III, COMMERCIAL TAXES, ERNAKULAM-682016.

5. INSPECTING ASSISTANT COMMISSIONER (RR), COMMERCIAL TAXES, KAKKANAD-682030.

6. COMMERCIAL TAX INSPECTOR, COMMERCIAL TAX CHECK POST, WALAYAR.

7. COMMERCIAL TAX INSPECTOR, COMMERCIAL TAX CHECK POST, WALAYAR-678624.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 30801 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:TRUE COPY OF THE ORDER IN T.A.(VAT) NO.37/2011 DATED 13.6.2013.

EXT.P2:TRUE COPY OF THE RELEASE ORDER TOGETHER WITH THE RECEIPT FOR PAYMENT OF MONEY.

EXT.P3:TRUE COPY OF THE ORDER DATED 10/05/2012 OF THE INTELLIGENCE OFFICER,SQUAD NO.III,ERNAKULAM.

EXT.P4:TRUE COPY OF THE ASSESSMENT ORDER DATED 31/12/2014.

EXT.P5:TRUE COPY OF THE APPEAL FILED AGAINST EXHIBIT P3 PENALTY ORDER DATED 9.7.2012.

EXT.P6:TRUE COPY OF THE APPEAL FILED AGAINST EXHIBIT P4 ASSESSMENT ORDER DATED 03.03.2015.

EXT.P7:TRUE COPY OF THE CONDITIONAL ORDER DATED 18/03/2015.

EXT.P8:TRUE COPY OF THE LETTER DATED 30/03/2015.

EXT.P9:TRUE COPY OF THE TDS CERTIFICATE ISSUED BY IOC.

EXT.P10:TRUE COPY OF THE ORDER DATED 31/12/2014.

EXT.P11:TRUE COPY OF REVNUE RECOVERY NOTICE FOR 2011-2012 DATED 2.7.2015.

EXT.P12:TRUE COPY OF REVENUE RECOVERY NOTICE FOR 2010-2011 DATED 16.3.2015.

EXT.P13:TRUE COPY OF THE NOTICE ISSUED BY THE COMMERCIAL TAX CHECK POST AT WALAYAR DATED 31/08/2015.

EXT.P14:TRUE COPY OF THE NOTICE ISSUED BY THE COMMERCIAL TAX CHECK POST AT MANHESHWAR DATED 04/09/2015.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.30801 of 2015

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Dated this the 15th day of October, 2015

J U D G M E N T

Against Ext.P3 order of penalty and Ext.P4 assessment order under the Kerala Value Added Tax Act (hereinafter referred to as ('the KVAT Act'), the petitioner preferred Exts.P5 and P6 appeals respectively before the 1st and 2nd respondents. Along with Ext.P6 appeal, the petitioner had also preferred a stay petition which was considered by the 2nd respondent who passed Ext.P7 conditional order directing the petitioner to pay an amount of Rs.1,82,550/- as a condition for grant of stay of recovery of the balance amount confirmed against the petitioner by Ext.P4 assessment order pending disposal of the appeal. While so, by Ext.P11 revenue recovery notice, the respondents also proceeded to recover the amounts that were confirmed against the petitioner by an assessment order under the KVAT Act for the year 2010-2011. It is the case of the petitioner that, the said assessment order is not contested and the liability is admitted. The petitioner, however, has a case that the refund amounts that were directed to be paid to the petitioner by Ext.P1 order of the appellate Tribunal have not been paid to him till date and the amount due to the petitioner by way of refund is Rs.2,83,120/-. It is under these circumstances, that the petitioner prays that the recovery steps currently under way, for recovery of the amounts confirmed against the petitioner by Ext.P4 assessment order, as well as the assessment order for the year 2010-20111 which is not contested, be kept in abeyance till such time as the amounts directed to be refunded pursuant to Ext.P1 order are paid to the petitioner, or in the alternative, adjusted against the pending dues of the petitioner to the department.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that Ext.P7 conditional order requires the petitioner to pay an amount of Rs.1,82,550/- as a condition for grant of stay against recovery of the balance amounts confirmed against the petitioner by the assessment order concerned. As against this, there is an amount of Rs.2,83,120/- that is due to the petitioner by way of refund. Taking into account the said fact, I am of the view that, the requirement of the petitioner paying the amounts indicated in Ext.P7 as a condition for stay is to be done away with. I, therefore, direct the 1st and 2nd respondents to consider and pass orders in Exts.P5 and P6 appeals respectively, without insisting on any amount as pre-deposit for hearing the appeal, and pass final orders in the appeals within two months from the date of receipt of a copy of this judgment. As regards the issue of refund due to the petitioner pursuant to Ext.P1 order of the Tribunal, I stay the operation of Ext.P12 revenue recovery notice for a period of two months so as to enable the respondents to take steps to implement Ext.P1 order of the Tribunal by granting the refund amounts to the petitioner in the meanwhile. I make it clear that it is open to the respondents to either refund the amounts mentioned in Ext.P1 order of the petitioner or adjust the refund amount due to the petitioner towards the dues from the petitioner for the assessment year 2010-2011 after intimating the petitioner. The check post alerts issued against the petitioner in the light of the revenue recovery notices that have been stayed in this judgment shall be withdrawn with immediate effect.

The writ petition is disposed as above

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/15.10.15