IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 31520 of 2015 (L)

PETITIONER :

M/S.TIPTOP FURNITURE (P) LTD.,
KOTTAKKAL, MALAPPURAM DISTRICT
REPRESENTED BY K.T. SAIDALAVI
MANAGING PARTNER.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V. MENON

RESPONDENT(S) :
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1. **ASST. COMMISSIONER**
   COMMERCIAL TAXES, SPECIAL CIRCLE
   MALAPPURAM – 676 505.

2. **DEPUTY COMMISSIONER (APPEALS)**
   DEPARTMENT OF COMMERCIAL TAXES
   ERNAKULAM – 15.

3. **INSPECTING ASST. COMMISSIONER**
   DEPARTMENT OF COMMERCIAL TAXES
   MALAPPURAM AT MANJERI – 676 121.

R1 TO R3 BY GOVT. PLEADER SMT. K.T. LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 31520 of 2015 (L)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	**:**	**COPY OF ORDER ISSUED BY THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL DATED 4-12-2003.**
EXT.P2		**COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DATED 24-2-2015.**
EXT.P3		**COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 4-4-2015.**
EXT.P4		**COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 11-5-2015.**
EXT.P5		**COPY OF JUDGMENT IN WP(C) NO. 16954/15 OF THIS HON'BLE COURT DATED 8-6-2015.**
EXT.P6		**COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 10-9-2015.**
EXT.P7		**COPY OF ORDER ISSUED BY THE DEPUTY COMMISSIONER, ERNAKULAM DATED 29-8-2014.**

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.31520 of 2015

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Dated this the 16th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P6 conditional order of stay that was passed by the 2nd respondent in an appeal preferred by the petitioner against an assessment for the assessment year 2012-2013 under the Kerala Value Added Tax Act. The contention of the petitioner in the writ petition is essentially that while passing Ext.P6 order, the 2nd respondent did not exercise his discretion validly.

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 that in Ext.P6 order the 2nd respondent has furnished adequate reasons to justify the direction that the petitioner should pay 30% of the balance demand and furnish security to the satisfaction of the assessing authority for the remaining amount, as a condition for grant of stay during the pendency of the appeal. In particular, the 2nd respondent finds that the petitioner had not produced evidence to

prove that the items that were sold by the petitioner were handicraft items that would qualify for a lower rate of tax. On a perusal of Ext.P6 order, I do not find any reason to interfere with the same in these proceedings under Article 226 of the Constitution of India. The writ petition in its challenge against Ext.P6 order fails and is accordingly dismissed.

Counsel for the petitioner seeks some time for complying with the directions in Ext.P6 order. Taking note of the plea of financial hardship urged on behalf of the petitioner, I direct that if the petitioner complies with the directions in Ext.P6 order within three weeks from the date of receipt of a copy of this judgment, the same shall be deemed as compliance with Ext.P6 order.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/16.10.15