IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 33728 of 2015 (M)

PETITIONER:

M/S. INDIAN AUTO SPARES,
PUTHIYARA P.O, CALICUT-673 004,
REPRESENTED BY ITS MANAGING
PARTNER JOJI VARGHESE.

BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM

RESPONDENT(S):
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1. **COMMERCIAL TAX OFFICER,**
   3RD CIRCLE, SALES TAX COMPLEX,
   JAWAHAR NAGAR, ERANJIPPALAM P.O,
   KOZHIKODE-673 006.

2. **THE ASST. COMMISSIONER (APPEALS),**
   OFFICE OF THE DEPUTY COMMISSIONER (APPEALS),
   NIRMALA ARACADE, MINI BYEPASS ROAD,
   NEAR ERANJHIPPALAM JUNCTION,
   KOZHIKODE-673 006.

3. **DEPUTY TAHSILDAR, REVENUE RECOVERY,**
   TALUK OFFICE, ALUVA,
   ERNAKULAM DISTRICT, PIN-683 101.

4. **VILLAGE OFFICER, ANKAMALI VILLAGE,**
   ANKAMALI PO, ALUVA TALUK,
   ERNAKULAM DISTRICT-683 572.

BY GOVERNMENT PLEADER SMT.LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 33728 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS :

P1 : TRUE COPY OF THE JUDGMENT IN OS NO.507/2010 DT 18-8-2012 OF THE SUB COURT, KOZHIKODE.

P2 : TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE PETITIONER FOR THE YEAR 2009-2010.

P3 : TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE PETITIONER FOR THE YEAR 2010-2011.

P4 : TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE PETITIONER FOR THE YEAR 2011-2012.

P5 : TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE PETITIONER FOR THE YEAR 2012-2013.

P6 : TRUE COPY OF THE JUDGMENT DT 19-6-2014 IN WPC.NO.15591/2014.

P7 : TRUE COPY OF THE ORDER NO.SPI20/14 IN VATA-480/14 DT. 4-9-2014.

P8 : TRUE COPY OF THE ORDER PASSED IN VATA 480/2014 BY THE 2ND RESPONDENT DT. 31-3-2015.

P9 : TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DT. 18-6-2015 FOR THE YEAR 2012-13.

P10 : TRUE COPY OF THE APPEAL DT. 11-8-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

P11 : TRUE COPY OF THE STAY PETITION DT. 11-8-2015.

P12 : TRUE COPY OF THE ORDER NO.SP 504/15 IN VATA 1401/15 DT. 19-10-2015 PASSED BY THE 2ND RESPONDENT.

P13 : TRUE COPY OF THE REVENUE RECOVERY NOTICE DT. 25-9-2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.33728 of 2015

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Dated this the 6th day of November 2015

JUDGMENT

The challenge in the writ petition is against Ext.P12 conditional order of stay, that was passed by the 2nd respondent in an appeal preferred by the petitioner against the order of assessment under the KVAT Act, for the assessment year 2012-13. The grievance of the petitioner in the writ petition is essentially that while passing Ext.P12 order, the 2nd respondent did not exercise its discretion validly.

2. I have heard the learned counsel for the petitioner and also 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.P12 order, the 2nd respondent gives reasons as to why only a conditional order of stay could be passed in the matter. In particular, it is pointed out that the petitioner had not intimated the assessing authority of the sale of closing stock in advance and the

petitioner also did not produce any documents in evidence to substantiate his contention at the time of argument of the stay petition. Under the said circumstances, I am of the view that Ext.P12 order passed by the 2nd respondent, does not call for any interference in these proceedings under Article 226 of the Constitution of India. The writ petition in its challenge against Ext.P12 order therefore fails, and accordingly dismissed.

Counsel for the petitioner would pray for some time to comply with the directions in Ext.P12 order. Taking note of the plea of financial hardship urged by the petitioner, I direct that if the petitioner complies with the directions in Ext.P12 order on or before 30.11.2015, then the same shall be treated as valid compliance with the directions of Ext.P12 order and the 2nd respondent shall proceed to pass orders in the appeal preferred by the petitioner, after hearing him.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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