IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 34461 of 2015 (G)

PETITIONER(S) :

R.RONAK,
PROPRIETOR, DEV SNACKS, CHERIYELA,
ALUMMOODU P.O., KOLLAM- 697 577.

BY ADVS.SRI.S.SANTHOSH KUMAR
SMT.P.LISSY JOSE.

RESPONDENT(S) :
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1. **THE DEPUTY COMMISSIONER (APPEALS-II),**
   COMMERCIAL TAXES, KOLLAM- 691 013.

2. **THE COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAX OFFICE, KUNDARA,
   KOLLAM- 691 501.

BY GOVERNMENT PLEADER SRI.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 34461 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: TRUE COPY OF THE APPLICATION DATED 30.03.2011 FOR CANCELLATION OF TRADE MARK REGISTRATION.

EXT.P2: TRUE COPY OF THE ASSESSMENT ORDER DATED 29.06.2012 FOR THE ASSESSMENT YEAR 2006-2007.

EXT.P2(A): TRUE COPY OF THE ASSESSMENT ORDER DATED 07.09.2012 FOR THE ASSESSMENT YEAR 2007-2008.

EXT.P2(B): TRUE COPY OF THE ASSESSMENT ORDER DATED 07.09.2012 FOR THE ASSESSMENT YEAR 2008-2009.

EXT.P2(C): TRUE COPY OF THE ASSESSMENT ORDER DATED 07.09.2012 FOR THE ASSESSMENT YEAR 2009-2010.

EXT.P2(D): TRUE COPY OF THE ASSESSMENT ORDER DATED 07.09.2012 FOR THE ASSESSMENT YEAR 2010-2011.

EXT.P2(E): TRUE COPY OF THE ASSESSMENT ORDER DATED 04.04.2014 FOR THE ASSESSMENT YEAR 2011-2012.

EXT.P3: TRUE COPY OF THE APPEAL DATED 24.09.2014 FOR THE YEAR 2006-2007.

EXT.P3(A): TRUE COPY OF THE APPEAL DATED 24.09.2014 FOR THE YEAR 2007-2008.

EXT.P3(B): TRUE COPY OF THE APPEAL DATED 24.09.2014 FOR THE YEAR 2008-2009.

EXT.P3(C): TRUE COPY OF THE APPEAL DATED 24.09.2014 FOR THE YEAR 2009-2010.

EXT.P3(D): TRUE COPY OF THE APPEAL DATED 24.09.2014 FOR THE YEAR 2010-2011.

EXT.P3(E): TRUE COPY OF THE APPEAL DATED 10.06.2014 FOR THE YEAR 2011-2012.

EXT.P4: TRUE COPY OF STAY PETITION DATED 24.09.2014 FILED IN EXT.P2 APPEAL.

EXT.P4(A): TRUE COPY OF STAY PETITION DATED 24.09.2014 FILED IN EXT.P2(A) APPEAL.

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EXT.P4(B): TRUE COPY OF STAY PETITION DATED 24.09.2014 FILED IN EXT.P2(B) APPEAL.

EXT.P4(C): TRUE COPY OF STAY PETITION DATED 24.09.2014 FILED IN EXT.P2(C) APPEAL.

EXT.P4(D): TRUE COPY OF STAY PETITION DATED 24.09.2014 FILED IN EXT.P2(D) APPEAL.

EXT.P4(E): TRUE COPY OF STAY PETITION DATED 10.06.2014 FILED IN EXT.P2(E) APPEAL.

EXT.P5: TRUE COPY OF COMMON ORDER DATED 18.09.2015 BY THE 1ST RESPONDENT.

EXT.P5(A): TRUE COPY OF ORDER DATED 18.09.2015 PASSED BY THE 1ST RESPONDENT FOR THE YEAR 2011-2012.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.34461 OF 2015 (G)

Dated this the 16th day of November, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P5 and P5(a) conditional orders of stay that were passed by the 1st respondent in appeals preferred by the petitioner against an assessment under the KVAT Act for the assessment years 2006-07 to 2011-12. The grievance of the petitioner in the writ petition is essentially that while passing Exts.P5 and P5(a) conditional orders, the 1st respondent did not exercise his discretion validly.

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

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that, in Exts.P5 and P5(a) orders, the 1st respondent has dealt with the contentions raised by the petitioner in the stay applications preferred by him. In particular, it is pointed out that there were no documents produced by

the petitioner to substantiate his contention that there was only a certain percentage of products that were sold under the brand name, and not the entire quantity as was taken by the Assessing Authority for the purpose of fastening the higher rate of tax. In the absence of documents to substantiate the contentions of the petitioner, it would have been impossible for the 1st respondent Appellate Authority to come to any firm conclusion, in favour of the petitioner, with regard to the quantum of goods that were sold under the brand name, which attracted higher rate of tax. I therefore find no reason to interfere with Exts.P5 and P5(a) orders passed by the 1st respondent in these proceedings under Article 226 of the Constitution of India. The writ petition, in its challenge against the said orders, is therefore dismissed.

Counsel for the petitioner would submit that since the amount required to be deposited by Exts.P5 and P5(a) orders is on the higher side, he may be given some time to comply with the directions in Exts.P5 and P5(a) orders. 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 Exts.P5 and P5(a) orders or or before 31.12.2015, then the same shall be treated as in compliance with the said directions in Exts.P5 and P5(a) orders, and the 1st respondent shall proceed to hear the appeals preferred by the petitioner, on merits.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/16/11/15