IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 34705 of 2015 (K)

PETITIONER:

M/S.THE LEELA KOVALAM
A UNIT OF HOTEL LEELA VENTURE LTD., KOVALAM
THIRUVANANTHAPURAM-695527
REPRESENTED BY ITS GENERAL MANAGER,
MR.N.C.SOMAIAH.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.RAJA KANNAN

RESPONDENTS:

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1. STATE OF KERALA
   REPRESENTED BY ITS SECRETARY TO GOVERNMENT
   TAXES DEPARTMENT, SECRETARIAT
   THIRUVANANTHAPURAM- 695001.

2. THE SALES TAX OFFICER (ENQUIRY)-I
   LUXURY TAX, OFFICE OF THE DEPUTY COMMISSIONER
   COMMERCIAL TAXES, THIRUVANANTHAPURAM-695002.

3. THE DEPUTY COMMISSIONER (APPEALS)
   COMMERCIAL TAXES, THIRUVANANTHAPURAM-695002.

BY SR. GOVERNMENT PLEADER SRI. SUDHEESHKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 34705 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: **THE TRUE COPY OF THE ORDER OF ASSESSMENT DATED 27.04.2015 ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2010-11.**

EXHIBIT-P2: **THE TRUE COPY OF THE APPEAL MEMORANDUM (WITHOUT ANNEXURES) DATED 01.07.2015 FILED BY THE PETITIONER AGAINST EXT.P1 ORDER BEFORE THE 3RD RESPONDENT.**

EXHIBIT-P3: **THE TRUE COPY OF THE STAY PETITION DATED 01.07.2015 FILED BY THE PETITIONER AGAINST EXT.P1 ORDER BEFORE THE 3RD RESPONDENT.**

EXHIBIT-P4: **THE TRUE COPY OF THE CONDITIONAL STAY ORDER DATED 07.10.2015 PASSED BY THE 3RD RESPONDENT IN LTA51/15.**

EXHIBIT-P5: **THE TRUE COPIES OF INVOICE SHOWING DISCOUNT ALLOWED TO CUSTOMERS FOR USING SPA. (APRIL, 2010 TO MARCH, 2011).**

EXHIBIT-P6: **THE TRUE COPY OF THE LEDGER EXTRACTS PERTAINING TO DIVYA SPA, SPA CLUB AND SPA YOGA DATED 31.3.2011.**

EXHIBIT-P7: **THE TRUE COPY OF THE AGREEMENT DATED 19.07.2011 BETWEEN SOFT TOUCH HEALTHCARE PVT.LTD.**

EXHIBIT-P8: **THE TRUE COPY OF THE LEDGER EXTRACT PERTAINING TO SOFT TOUCH HEALTHCARE PVT.LTD. DATED 31.3.2011.**

EXHIBIT-P9: **THE TRUE COPY OF THE WORKSHEET SHOWING THE PAYMENT OF LUXURY TAX FOR THE YEAR 2010-11.**

EXHIBIT-P10: **THE TRUE COPY OF THE LEDGER EXTRACT SHOWING THE MISCELLANEOUS INCOME DATED 26.6.2015.**

EXHIBIT-P11: **THE TRUE COPY OF THE LEDGER EXTRACT SHOWING THE RECEIPTS OF SPONSORSHIP INCOME DATED 26.6.2015.**

RESPONDENT(S)' EXHIBITS:-NIL

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 34705 OF 2015

Dated this the 19th day of November, 2015

JUDGMENT

I am not prepared to hold that the appellate authority has mechanically passed Ext. P4 conditional order of stay without any application of mind. Ext.P4 order inter alia states as follows:-

> "Examined the contentions raised along with the connected records. The assessing authority completed the assessment for the reason that the assessing authority detected a series of suppressed turnover which were exigible to Luxury Tax such as retention charges, membership income, allowance on spa, yoga, sponsorship income etc. The appellant failed to prove the genuineness before finalizing the assessment. Hence the assessing authority completed the assessment creating a tax liability of Rs. 40,30,935.00 with interest. Thus a prima facie case is established against the appellant."

The appellate authority has found that a prima facie case is established against the appellant whereas a prima facie case has been found in favour of the appellant in **Archana Agencies v. Commercial Tax Officer [2014 (2)**

KLT 715]. The appellate authority has exercised its discretion after taking note of the relevant facts in directing the petitioner to deposit only 30% of the disputed amount which is less than 1/3rd. The petitioner has only been directed to furnish security for the balance amount which cannot be said to be onerous under any circumstances. I am not inclined to interfere with Ext. P4 conditional order of stay passed pending appeal.

2. I however extend the time granted by the appellate authority by three weeks from today to comply with the conditional order. The failure to comply with the conditional order within the extended time exposes the petitioner to coercive steps.

The writ petition is disposed of.

V. CHITAMBARESH
JUDGE

DCS