IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 35052 of 2015 (F)

PETITIONER(S):

P.A. NOUSHAD, M/S. CRESCENT CAR WORLD,
COLLEGE JUNCTION, KOLLAM.

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

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER,
   1ST CIRCLE, KOLLAM-691 001.

2. DEPUTY COMMISSIONER (APPEALS),
   DEPARTMENT OF COMMERCIAL TAXES,
   KOLLAM-691 001.

BY GOVT. PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 35052 of 2015 (F)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2010-11 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 12/08/2015.

EXT.P2 COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 07/09/2015.

EXT.P3 COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 07/09/2015.

EXT.P4 COPY OF THE PURCHASE LIST OBTAINED FROM THE 1ST RESPONDENT DATED 09/12/2015.

EXT.P5 COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 19/10/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 35052 of 2015
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Dated this the 20th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 conditional order of stay passed by the 2nd respondent in a stay application filed along with the appeal preferred by the petitioner against an order of assessment under the KVAT Act, for the assessment year 2010-11. The grievance of the petitioner in the writ petition is essentially that, while passing Ext.P5 order, the 2nd respondent did not exercise its discretion validly.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing 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 the 2nd respondent, while considering the stay application, went through the contentions of the petitioner, but found that the petitioner had not produced any evidence to rebut the findings of the assessing authority, either along with the appeal or at the time of personal hearing before the 2nd respondent. It was under those circumstances, that the 2nd respondent found that the ends of

justice would be met by directing the petitioner to remit 30% of the balance tax amount and interest demanded for the year within three weeks from the date of receipt of the order. I see no reason to interfere with the said order of the 2nd respondent, in these proceedings under Article 226 of the Constitution of India, in the absence of any jurisdictional error committed by the 2nd respondent. I therefore, dismiss the writ petition in its challenge against Ext.P5 order of the 2nd respondent.

Counsel for the petitioner would submit that, he would require some time to comply with the directions in Ext.P5 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.P5 order, within a month from today, then the same shall be considered as compliance with the directions in Ext.P5 order and the 2nd respondent shall proceed to hear the appeal on merits.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /20.11.15