IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

WP(C).No. 35543 of 2015 (P)

PETITIONER :

M/S. ARTECH GROUP CONTRACTING, AGED 48 YEARS,
ARTECH HOUSE, TC 24/1014-I, THYCAUD,
THIRUVANANTHAPURAM - 14,
REPRESENTED BY ITS MANAGING PARTNER T.S. ASOK

BY ADVS.SRI.V.V.ASOKAN (SR.)
SRI.K.I.MAYANKUTTY MATHER

RESPONDENTS :
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1. **ASSISTANT COMMISSIONER (WORKS CONTRACTS), COMMERCIAL TAXES, THIRUVANANDAPURAM - 695001.**

2. **DEPUTY COMMISSIONER (APPEALS), KARAMANA, THIRUVANANTHAPURAM - 695002.**

3. **INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL TAXES (RECOVERY), THIRUVANANDAPURAM - 695001.**

4. **THE TAHSILDAR (REVENUE RECOVERY), THIRUVANANDAPURAM - 695001**

BY GOVERNMENT PLEADER SRI.R. RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 35543 of 2015 (P)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE PRE-ASSESSMENT NOTICE ISSUED BY THE R1 (AY-2013-2014) DT 18/12/2014.

P2: COPY OF THE REPLY GIVEN BY THE PETITIONER TO THE R1 DT 16/1/2015

P3: COPY OF THE ASSESSMENT ORDER ISSUED BY R1 DT 4.2.2015

P4: COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE R1 FOR THE AY-2013-14 DT 16/3/2015

P5: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WPC NO. 6588/2015 DT 25/3/2015.

P6: COPY OF THE CONDITIONAL ORDER OF STAY PASSED BY THE R2 DT 28.3.2015.

P7: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WPC 18029/2015 DT 16/6/2015.

P8: COPY OF THE STAY ORDER ISSUED BY THE R2 IN KVATA 665/2014 DT 13/10/2015.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 35543 of 2015
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Dated this the 24th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P8 conditional order of stay passed by the 2nd respondent in a stay petition filed along with an appeal against an order of assessment for the assessment year 2013-14 under the Kerala Value Added Tax Act, hereinafter referred to as the "KVAT Act". The grievance of the petitioner in the writ petition is essentially that, while passing Ext.P8 order, the 2nd respondent did not exercise her 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 and the submissions made across the bar, I find from Ext.P8 order that the consistent case of the petitioner, with regard to a mistake that was occasioned in the computation of tax payable by the petitioner for the assessment year in question, has not been considered by the 2nd respondent. It has been the case of the petitioner, even at the time of completion of the assessment, that

the figures shown in the return with regard to the balance work to be completed was a mistake in that there were certain figures, which had already been reckoned for the purposes of payment of tax for the previous year representing completed work, which had inadvertently been included in the figures showing the balance work to be completed for the assessment year in question. The assessment order itself appears to have been passed without affording the petitioner an opportunity of hearing. However, when the matter came up before this Court, in an earlier round, the petitioner was relegated to the alternate remedy before the 2nd respondent appellate authority. Thereafter, when a stay order was passed by the 2nd respondent, the said order was impugned by the petitioner and finding that the 2nd respondent had not furnished any reasons, and had not dealt with the specific contention of the petitioner in the appeal, this Court by Ext.P7 judgment, had directed the 2nd respondent to reconsider the matter and dispose the stay application by passing a fresh order. Consequent to Ext.P7 judgment of this Court, the 2nd respondent has now passed Ext.P8 order, which is substantially in line with Ext.P6 order, earlier passed by her. Taking note of the said fact, I am of the view that the interests of justice would now be served by directing the 2nd respondent to consider and pass orders on the appeal itself, without insisting on any further payments from the petitioner. I therefore, dispose the writ petition by quashing Ext.P8 order and directing the 2nd respondent to consider and pass orders in Ext.P4 appeal preferred by the petitioner within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. I make it clear, that recovery steps for recovery of amounts confirmed against the petitioner, by Ext.P3 assessment order, shall be kept in abeyance till such time as orders are passed by the 2nd respondent as directed and communicated to the petitioner.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /24.11.15