IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 36228 of 2015 (C)

PETITIONER(S):

M/S. KALAVARA HYPER MARKET,
POOKAD, CHEMANCHERY, KOZHIKODE DISTRICT,
REPRESENTED BY ITS PARTNER T.V SREEDHARAN.

BY ADVS.SRI.RAJESH NAMBIAR,
SMT.SINDHU K.NAMBIAR.

RESPONDENT(S):
----

1. COMMERCIAL TAX OFFICER,
COMMERCIAL TAX OFFICE, KOYILANDY-676 002.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOZHIKODE-676 001.

3. DEPUTY TAHSILDAR (REVENUE RECOVERY),
REVENUE RECOVERY OFFICE,
VATAKKARA, PIN- 676 201.

BY GOVT. PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 36228 of 2015 ©

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1	TRUE COPY OF THE ASSESSMENT ORDER DATED 25-03-2015 FOR THE YEAR 2011-12.
EXHIBIT P2	TRUE COPY OF THE APPEAL FILED AGAINST EXT P1 ASSESSMENT ORDER.
EXHIBIT P3	TRUE COPY OF THE STAY PETITION FILED IN EXT P2 APPEAL.
EXHIBIT P4	TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 31-07-2015.
EXHIBIT P5	TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 31-07-2015.
EXHIBIT P6	TRUE COPY OF THE ORDER DATED 04-09-2015 IN EXT P3 STAY PETITION.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

-- -- -- -- -- -- -- ---- -- -- -- --

W.P.(C) No.36228 of 2015

-- -- -- -- -- -- -- ---- -- -- -- --

Dated this the 1st day of December 2015

JUDGMENT

The challenge in the writ petition is against Exts.P6 conditional order of stay passed by the 2nd respondent in an appeal preferred against an order of assessment in relation to the petitioner, for the assessment year 2011-12 under the KVAT Act. The grievance of the petitioner in the writ petition is essentially that while passing Exts.P6 order, the 2nd respondent did not exercise his discretion validly.

2. I have heard the learned counsel for the petitioner and also the learned Government Pleaders 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.P6 order that the 2nd respondent has granted only a conditional stay against the recovery of the amounts confirmed against the petitioner by the assessment order. This was for the reason that, at the time of hearing, the petitioner did not produce any substantial evidence to support his contention with regard to the non

consideration of material by the assessing officer on merits. Under the circumstances, I am of the view that the directions in Ext.P6 order cannot be faulted, since the 2nd respondent could not have verified the contentions raised by the petitioner, by referring to any documentary evidence. I find force however in the contention of the petitioner that instead of leaving it to the discretion of the assessing authority to determine the security that he was to furnish, by taking note of the fact that the petitioner is a registered dealer, a simple bond without sureties would have sufficed as security for the balance amount for which stay was not granted. I therefore, dispose the writ petition by the holding that if the petitioner complies with the direction regarding payment of 30% of the demand confirmed against him, by the assessment order, and furnishes a simple bond without sureties for the balance amount confirmed against him by the assessment order, on or before 31.12.2015, the same shall be treated as in compliance with the directions in Ext.P6 order of the 2nd respondent. On the petitioner complying with the said direction, the 2nd respondent shall proceed to hear the appeal itself on merits in due course. The continuation of the recovery proceedings now initiated against the petitioner shall be subject to the compliance by the petitioner with the directions in this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/