

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 36557 of 2015 (T)

PETITIONER(S):

**M/S. JOSSIN TEXTILES, M.C.ROAD,
ETTUMANOOR, REPRESENTED BY ITS
MANAGING PARTNER, SRI.T.K.THOMAS.**

**BY ADVS.SRI.AJI V.DEV
SRI.SUSHANTH.J.**

RESPONDENT(S):

- 1. COMMERCIAL TAX OFFICER,
ETTUMANOOR - 686 631.**
- 2. THE DEPUTY COMMISSIONER (APPEALS - I),
COMMERCIAL TAXES, KOTTAYAM - 686 001.**
- 3. THE INSPECTING ASST. COMMISSIONER,
COMMERCIAL TAXES, KOTTAYAM - 686 002.**

BY GOVERNMENT PLEADER SRI.R.RANJITH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 36557 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: A TRUE COPY OF THE PRE-ASSESSMENT NOTICE ISSUED BY THE
1ST RESPONDENT FOR THE YEAR 2014-15 DTD.1.9.2015.**

EXT.P2: A TRUE COPY OF THE REPLY FILED DTD.11.9.2015.

**EXT.P3: A TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2014-15
DTD.14.9.2015.**

**EXT.P4: A STATEMENT OF PURCHASES EFFECTED BY THE PETITIONER, OF
HANDLOOM CLOTH FOR THE YEAR 2013-14.**

**EXT.P5: TRUE COPIES OF APPEAL MEMORANDUM AND INTERLOCUTORY
APPLICATIONS FILED FOR STAY OF THE DEMANDED AMOUNTS FOR THE
YEAR 2014-15 DTD. 30.9.2015.**

**EXT.P6: A TRUE COPY OF THE INTERLOCUTORY ORDER STIPULATING CONDITIONAL
STAY DTD.21.11.2015.**

EXT.P7: A TRUE COPY OF REVENUE RECOVERY NOTICE DTD.14.10.2015.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 36557 of 2015

Dated this the 3rd day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 conditional order of stay passed by the 2nd respondent in an appeal preferred by the petitioner against an assessment under the Kerala Value Added Tax Act, hereinafter referred to as the KVAT Act, for the assessment year 2014-15. The grievance of the petitioner is essentially that, while passing Ext.P6 order, the 2nd respondent did not exercise his 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 has examined the contentions of the petitioner in the stay petition with reference to the requirements of Section 6A of the KVAT Act, and it is on finding that the petitioner had not produced any documentary evidence to substantiate his contentions on merits, that the 2nd respondent was constrained to pass a conditional order of stay. I do not find any jurisdictional

error having been committed by the 2nd respondent, while passing Ext.P6 order. I therefore, see no reason to interfere with the said order in these proceedings under Article 226 of the Constitution of India. The writ petition in its challenge against Ext.P6 order, therefore, fails and is accordingly, dismissed.

Counsel for the petitioner seeks some time to comply with the directions in Ext.P6 order. Taking note of the plea of financial hardship urged on behalf of the petitioner, I direct that, if the petitioner complies with the conditions in Ext.P6 order by 31.12.2015, the same shall be treated as in compliance with Ext.P6 order and the 2nd respondent shall proceed to hear the appeal itself on merits.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE