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. 36561 of 2015 (U)

PETITIONER(S):

M/S. NEW CASHEW INDUSTRIES,
REPRESENTED BY SMT.ASYA K.,
LEGAL HEIR AND WIFE OF EX-PROPRIETOR,
LATE L.K.UMMER, AMBALATHARA,
KASARAGOD.

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

RESPONDENT(S):

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1. ASST. COMMISSIONER, KVAT SPECIAL CIRCLE,
COMMERCIAL TAXES, KASARGOD, PIN - 670 008.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOZHIKODE.

3. TAHSILDAR, HOSDURG,
KASARAGOD, PIN - 670 008.

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. 36561 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2007-08 UNDER CST DTD.11.11.2013.

EXT.P2: TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT AGAINST EXT.P1 ASSESSMENT ORDER.

EXT.P3: TRUE COPY OF THE STAY PETITION FILED BEFORE THE 2ND RESPONDENT IN EXT.P2 APPEAL.

EXT.P4: TRUE COPY OF THE PETITION FILED FOR CONDONATION OF DELAY IN FILLING EXT.P2 APPEAL.

EXT.P5: THE COPY OF THE REVENUE RECOVERY NOTICE DTD.28.5.2014.

EXT.P6: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DTD.8.7.2015 DISMISSING EXT.P3 STAY PETITION AND EXT.P2 APPEAL.

EXT.P7: TRUE COPY OF THE CHALLAN EVIDENCING PAYMENT OF THE ADMITTED TAX.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 36561 of 2015
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Dated this the 3rd day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 order, whereby the 2nd respondent, while considering a stay application filed along with the appeal preferred by the petitioner, against an order of assessment for the assessment year 2007-08 under the Central Sales Tax Act, hereinafter referred to as the CST Act, noted that the petitioner had not paid the admitted tax on inter-state sales turnover at the time of filing the appeal, and proceeded to dismiss the stay application as also the appeal on that ground. Counsel for the petitioner would submit that the non payment of admitted tax was an oversight and the petitioner firm, which is represented by a pardanashin lady, was not aware of the fact of non payment of admitted tax, since she had entrusted the authorised representative to comply with the formalities. It is prayed therefore, that another opportunity may be given to the petitioner. The petitioner has, since paid the admitted tax amount and this fact is borne out by Ext.P7 copy of the Chalan of the Department of Commercial Tax. The limited prayer of the petitioner is for a direction to the 2nd respondent appellate authority to reconsider the matter, taking note of the payment of admitted tax effected by the petitioner.

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 Ext.P6 order, that dismisses the stay application and the appeal preferred by the petitioner, was on the ground that the petitioner had not paid the admitted tax as a condition for maintaining the appeal itself. While it is a fact that the petitioner had not paid the admitted tax, and has paid the same only belatedly after the passing of Ext.P6 order, I note that the factum of non payment of tax was not intimated to the petitioner at the time of receiving the appeal on the files before the 2nd respondent. At any rate, since the petitioner has subsequently paid the admitted tax as evidenced by Ext.P7, I am of the view that the petitioner should be afforded an opportunity of presenting her case before the appellate authority. I, therefore, quash Ext.P6 order and direct the 2nd respondent to restore the appeal and stay application on the files before him and hear the stay petition afresh, after hearing the

petitioner. To enable the 2nd respondent to do so, I direct the petitioner to appear before the 2nd respondent at his Office at 11AM on 15.12.2015. The petitioner shall produce a copy of the writ petition together with a copy of this judgment before the 2nd respondent for further action. Needless to say, revenue recovery proceedings, if any, initiated against the petitioner shall be kept in abeyance, till such time as fresh orders are passed by the 2nd respondent as directed and communicated to the petitioner.

The writ petition is disposed as above.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /3.12.15