

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 37117 of 2015 (L)

PETITIONER:

**M/S.ALMARK HOUSING COMPANY P LTD.,
VTH FLOOR, CC 28/925 G, SANTHI EMERALD,
CHERUPARAMBATH ROAD, KADAVANTHARA, COCHIN,
REPRESENTED BY ITS MANAGING DIRECTOR MR.VINOD K.K.**

BY ADV. SMT.K.LATHA

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO GOVT. OF KEALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.**
- 2. THE ASSISTANT COMMISSIONER,
(WORKS CONTRACT) COMMERCIAL TAXES,
ERNAKULAM - 682 033.**
- 3. THE DEPUTY COMMISSIONER (APPEALS) II,
COMMERCIAL TAXES, ERNAKULAM - 682 031.**
- 4. THE INSPECTING ASSISTANT COMMISSIONER,
(REVENUE RECOVERY OFFICER), COMMERCIAL TAXES,
KAKKANAD, ERNAKULAM - 682 030.**

BY GOVERNMENT PLEADER SRI.R.RANJITH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1. THE TRUE COPY OF THE ASSESSMENT ORDER NO.32072086034/
 2007-08 DATED 1/9/2015 ISSUED BY THE 2ND RESPONDENT TO THE
 PETITIONER.
- EXT.P2. THE TRUE COPY OF THE APPEAL IN FORM NO.29 AND GROUNDS OF
 APPEAL FILED BY THE PETITIONER AGAINST THE P1 ASSESSMENT
 ORDER FOR THE YEAR 2007-2008.
- EXT.P3. THE TRUE COPY OF THE DEMAND NOTICE FOR THE YEAR 2007-2008
 IN FORM NO.12 ISSUED BY THE 2ND RESPONDENT TO THE
 PETITIONER DATED 1/9/2015 BASED ON THE P1 ASSESSMENT ORDER.
- EXT.P4. THE TRUE COPY OF THE STAY ORDER NO.KVATA 2020/2015
 DATED 18/11/2015 ISSUED BY THE 3RD RESPONDENT TO THE
 PETITIONER.

RESPONDENT(S)' EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.37117 of 2015

Dated this the 8th day of December 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 conditional order of stay passed by the 3rd respondent in an appeal preferred by the petitioner against the order of assessment under the KVAT Act, for the assessment years 2007-08. The grievance of the petitioner in the writ petition is essentially that while passing Ext.P4 order, the 3rd respondent did not exercise its discretion validly.

2. I have heard the learned counsel for the petitioner and also the learned Government Pleader 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.P4 order, the 3rd respondent has considered the submissions made by the learned counsel for the petitioner and found that the contentions raised before him were not supported by any documents produced by the petitioner. It is under those circumstances, and in the absence of any material to support the

contentions of the petitioner, that the 3rd respondent was constrained to pass only a conditional order of stay requiring the petitioner to deposit 30% of the outstanding demand and to furnish adequate security for the balance amount as a condition for the stay. On a perusal of the reasons given in Ext.P4, I do not see the same as vitiated by any error of jurisdiction that would necessitate an interference with the said order, in these proceedings under Article 226 of the Constitution of India. Accordingly, I dismiss the writ petition in its challenge against Ext.P4 order of the 3rd respondent.

Counsel for the petitioner would pray for some time to pay the amounts demanded in Ext.P4 order. Taking into account the plea of financial hardship raised by the petitioner, I direct that if the petitioner complies with the directions in Ext.P4 order, by 15.01.2016, then the same shall be treated as in compliance with Ext.P4 order and the 3rd respondent shall proceed to hear the appeals on merits.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/