IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 38495 of 2015 (J)

PETITIONER :

M/S.CHINA SQUARE,
GULF BAZAR, KOHINOOR BUILDING, TIRUR,
REPRESENTED BY ITS MANAGING PARTNER ABDU SAMAD.P.K.

BY ADVS.SRI.K.J.ABRAHAM
SRI.NIKHIL JOHN
SRI.K.A.KABEER

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   DEPARTMENT OF COMMERCIAL TAXES,
   TIRUR. PIN-680 581

2. **THE ASSISTANT COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, PALAKKAD-678 001

3. **M/S. VGR AGENCIES, PROPRIETOR,**
   MR. GIRISH, PUTHENPURAKKAL HOUSE,
   AMARAKUNI, PULPALLY-673 579

R1 & R2 BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.38495/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1	COPY OF THE ASSESSMENT ORDER NO.32100505097/11-12 DATED 30/05/2015
P2	COPY OF THE APPEAL MEMORANDUM IN FORM NO.29 FOR THE YEAR 2011-12 DATED 09/07/2015
P3	COPY OF THE FORM NO.30 STAY PETITION DATED 09/07/2015
P4	COPY OF THE PROCEEDINGS NO.A 1752/15-16 DATED 15/09/2015
P5	COPY OF THE LAWYER NOTICE DATED 13/04/2015
P6	COPY OF THE STAY ORDER NO.1A-319/2015 DATED 11/11/2015.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.38495 of 2015

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Dated this the 18th day of December, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P6 conditional order of stay passed by the 2nd respondent in a stay application filed along with an appeal against an order of assessment for the assessment year 2011-2012 under the Kerala Value Added Tax Act. The grievance of the petitioner in the writ petition is essentially that while passing Ext.P6 order, the 2nd respondent did not exercise his discretion validly. In particular, it is pointed out that even the assessment order, against which the appeal was filed, was passed in violation of the rules of natural justice, in that, the request of the petitioner for cross examination of a supplier from whom the petitioner was alleged to have made purchases was denied to the petitioner by the assessing authority. It is stated that although this aspect of denial of an opportunity to cross examine the supplier was highlighted before the appellate authority in the grounds of appeal, and reiterated at the time of arguing the stay petition, 2nd respondent appellate authority proceeded to mechanically consider the stay application and pass Ext.P6 order directing the petitioner to pay 40% of the balance amount confirmed against him by the assessment order as a condition for the grant of stay.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that it is the specific case of the petitioner that the assessment order itself is vitiated on account of a non-compliance with the rules of natural justice, in that, the petitioner was not afforded an opportunity to cross examine the 3rd respondent from whom he was alleged to have made unaccounted purchases. Under normal circumstances, and if established, that who would suffice to quash the assessment order itself. The petitioner however has raised a specific ground in the appeal stating that there was a denial of an opportunity to cross-examine at the time of passing the assessment order. This aspect was not taken note of by the appellate authority while considering the stay application, and determining whether the petitioner was required to pay any amount pending disposal of the appeal. In my view, the denial of natural justice at the stage of adjudication proceedings ought to have weighed with the appellate authority while considering the stay petition preferred by the petitioner. Under the said circumstance, I quash Ext.P6 order and direct the 2nd respondent appellate authority to consider and pass orders in the Ext.P2 appeal preferred by the petitioner against Ext.P1 assessment order. The 2nd respondent shall pass orders in the appeal within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. Recovery steps for recovery of amounts confirmed against petitioner by Ext.P1 assessment order shall be kept in abeyance till such time as orders are passed by the 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/19.12.15