

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 14TH JUNE 2011 / 24TH JYASHTA 1933

WP(C).No. 15669 of 2011(G)

PETITIONER(S):

ABRAHAM K.THOMAS,
S/O.MATHEW ABRAHAM, KARIMKUTTIYIL,
ANGADI. P.O., RANNY-689 674.

BY ADV. SRI.SIBY MATHEW,
SRI.PHILIP J.VETTICKATTU,
SRI.B. PREMNATH.

RESPONDENT(S):

1. THE DEPUTY COMMISSIONER (APPEALS),
KOLLAM.

2. COMMERCIAL TAX OFFICER (WC & LT),
COMMERCIAL TAXES, PATHANAMTHITTA.

R1 & R2 BY GOVT. PLEADER MR.V.K. SHAMSUDHEEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14/06/2011,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ASSESSMENT ORDER DATED 24/03/2010 ISSUED BY 2ND RESPONDENT.

EXT.P2: COPY OF THE APPEAL FILED BY PETITIONER BEFORE 1ST RESPONDENT.

EXT.P2(a): COPY OF THE INTER LOCUTORY APPLICATION FOR STAY FILED BY THE PETITIONER.

EXT.P3: COPY OF THE ORDER DATED 27/03/2010 ISSUED BY THE 2ND RESPONDENT.

EXT.P4: COPY OF THE APPEAL FILED BY PETITIONER BEFORE 1ST RESPONDENT.

EXT.P4(a): COPY OF THE STAY PETITION FILED BY THE PETITIONER.

EXT.P5: COPY OF THE ORDER DATED 27/03/2010 ISSUED BY THE 2ND RESPONDENT.

EXT.P6: COPY OF THE APPEAL FILED BY PETITIONER BEFORE 1ST RESPONDENT.

EXT.P6(a): COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE 1ST RESPONDENT.

EXT.P7: COPY OF THE COMMON ORDER DATED 13/05/2011 GRANTING STAY ON CONDITION OF PAYING 50% OF TAX AMOUNT.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

rs

C.K.ABDUL REHIM, J.

W.P.(C).No.15669 of 2011

Dated this the 14th day of June, 2011

J U D G M E N T

Challenge is against Ext.P7 interim order passed by the 1st respondent appellate authority disposing the stay petitions filed along with Exts.P2, P4 and P6 appeals, which were instituted against Ext.P1, P3 and P5 orders of assessment. Assessment against the petitioner with respect to the years 2005-06, 2006-07 and 2007-08 were finalised through Ext.P1, P3 & P5. Challenge is made against the assessments on various grounds. The petitioner sought stay of collection of the tax amounts in dispute, pending disposal of the appeals. Through Ext.P7 the 1st respondent appellate authority had granted interim stay imposing condition on the petitioner for payment of 50% of the amounts due and on furnishing security for the balance.

2. Petitioner is challenging Ext.P7 order on the ground that the condition imposed for payment of 50% is highly unreasonable and arbitrary. It is specifically contended that the appellate authority had imposed such a condition in a mechanical manner without application of mind and without considering merits of the contentions raised. It is also

contended that Ext.P7 is a totally non speaking order which will not reflect any consideration of merits of the contentions raised by the appellate authority.

3. On a perusal of Ext.P7 it is revealed that the order was issued after affording an opportunity of hearing to the petitioner. Eventhough the appellate authority had narrated the main grounds as well as the contentions raised at the time of hearing, nothing is reflected in the order regarding consideration of the merits on such contentions. It is trite law by this time that the statutory appellate authorities are exercising quasi-judicial functions and they are expected to write reasoned orders with respect to granting of any interim relief. An order which will not reflect any consideration of the contentions and mechanical imposition of conditions will not stand the test of sustainability in legal parlance, in view of the settled precedents.

4. Under such circumstances, I am constrained to hold that Ext.P7 is an order which is totally unsustainable in the eye of law. Accordingly Ext.P7 is liable to be quashed. However I am of the opinion that remitting of the matter back to the 1st respondent for passing fresh orders will only result in multiplying the proceedings. Since the appeals are pending consideration and disposal before the 1st respondent, I am of the opinion that, ends of justice will be achieved if a direction is

issued for an early disposal of the appeals itself and till then to restrain the recovery steps subject to condition to be imposed.

5. Accordingly, the writ petition is allowed and Ext.P7 order is hereby quashed. The 1st respondent is directed to consider and dispose of Exts.P2, P4 and P6 appeals after affording an opportunity of hearing to the petitioner as early as possible, at any rate within a period of two months from the date of receipt of a copy of this judgment.

6. Till such time the appeals are disposed of as directed above, recovery of the amounts in dispute shall be kept in abeyance subject to condition of the petitioner remitting 1/3rd of the total amounts due and on furnishing security bond for the balance, within three weeks from the date of receipt of a copy of this judgment.

7. While effecting payment of 1/3rd as insisted above, credit shall be given to the payments if any already made against the disputed amounts.

C.K.ABDUL REHIM, JUDGE.

okb