2024:KER:33342

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 20TH DAY OF MAY 2024 / 30TH VAISAKHA, 1946

WA NO. 506 OF 2024

AGAINST THE ORDER/JUDGMENT DATED IN WP(C) NO.2715 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER

M/S.URC CONSTRUCTION PVT. LTD.,
URC NAGAR, 3RD STREET, VEERAPPANPALAYAM, THINDAL P.O., ERODE, TAMIL NADU, REPRESENTED BY ITS ASST. GENERAL MANAGER (ACCOUNTS & TAXATION),
S. BOOPATHI, PIN - 638012

BY ADVS.
R.SREEJITH
K.KRISHNA

RESPONDENTS/RESPONDENT

1. THE ASSISTANT COMMISSIONER OF STATE TAX, TAX PAYER SERVICES CIRCLE, PALAKKAD EAST, STATE GST DEPARTMENT, PALAKKAD, PIN - 678001
2. THE STATE TAX OFFICER (WORKS CONTRACT), STATE GST DEPARTMENT, PALAKKAD, PIN - 678001
3. THE COMMISSIONER OF COMMERCIAL TAXES, TAX TOWERS, KILLIPPALAM, KARAMANA, THIRUVANATHAPURAM, PIN - 695002

OTHER PRESENT:

SR.GP-V.K.SHAMSUDHEEN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J U D G M E N T

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Dated this the 20th day of May, 2024

Dr. A.K.Jayasankaran Nambiar, J.

This Writ Appeal has been preferred against the interim order dated 21.02.2024 of a learned Single Judge in W.P(C) No.2715 of 2024. By the said interim order, the learned Single Judge while adjourning the writ petition to a later date so as to enable the Government Pleader to file counter affidavit in the matter, further directed the appellant herein to make a deposit of 25% of the dues of tax assessed under Ext.P2 assessment order within a period of two weeks as a condition for grant of stay of recovery of balance tax, interest and penalty pending disposal of the writ petition.

2. We are informed by the learned counsel for the appellant that since the appellant could not deposit the 25% as

directed by the learned Single Judge within the time granted in the writ petition, the said stay was vacated subsequently by another Single Judge by the order dated 13.03.2024 and the writ petition was posted in due course to enable the Government Pleader to file a counter affidavit.

3. We have heard Smt.K.Krishna, the learned counsel for the appellant and Sri.V.K.Shamsudheen, the learned Government Pleader for the respondents.

4. On a consideration of the rival contentions, we find that the issue urged in the writ petition was essentially with regard to the legality of Ext.P2 order of assessment, which according to the learned counsel had been passed beyond the period of limitation prescribed under the statute (KVAT Act). The assessing authority appears to have ignored the said contention on limitation apparently, because the assessment order was passed pursuant to an audit objection raised in terms of Section 25A of the KVAT Act. We are informed that the issue as to whether an audit objection under Section 25A of the KVAT Act would have the effect of overriding the

limitation period prescribed under Section 25(1) of the said Act is pending consideration before another Single Judge of this Court. At any rate, since the issue of applicability of the limitation provision under Section 25(1) on the facts of the instant case is under consideration before this Court, we are of the view that the appellant herein had established a prima facie case for the grant of a stay pending disposal of the writ petition. This is more so because the express provisions of Section 25(1) of the KVAT Act clearly indicate that the limitation period for completion of assessment is six years from the end of the relevant assessment year. It is not in dispute that Ext.P2 order was passed beyond the said period since the assessment year in question is 2016-17.

5. We therefore, deem it appropriate to allow this writ appeal by setting aside that part of the impugned order of the learned Single Judge that directs the appellant to deposit 25% of the dues of tax assessed within a period of two weeks as a condition for grant of stay of recovery of balance tax, interest and penalty pending disposal of the writ petition.

6. Resultantly, while the writ petition is remitted back to the learned Single Judge for consideration on merits, we make it clear that pending disposal of the writ petition, recovery proceedings for recovery of the amounts confirmed against the appellant by Ext.P2 order shall be kept in abeyance.

The writ appeal is allowed as above.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

SYAM KUMAR V.M.
JUDGE

smm