**(2023) 07 KL CK 0155**

**In the High Court Of Kerala**

**Case No :** Original Petition (TAX) No. 10 Of 2023

P. Vijayan APPELLANT

Vs

State Tax Officer I RESPONDENT

**Date of Decision :** 20-07-2023

**Acts Referred:**

**Citation :** (2023) 07 KL CK 0155

**Hon'ble Judges :** A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P., J

**Bench :** Division Bench

**Advocate :** Harisankar V. Menon, Meera V.Menon, R.Sreejith, K.Krishna, Parvathy Menon, M.M.Jasmine

**Final Decision :** Disposed Of

# Judgement

A.K. Jayasankaran Nambiar, J.

1. The petitioner impugns Ext.P5 interim order dated 25.5.2023 of the Kerala Value Added Tax Appellate Tribunal in an interlocutory application filed in TA(VAT).No.20/2023. By the said order, the Appellate Tribunal, while considering a stay petition seeking stay of recovery of the amount of tax demanded from the petitioner by the authority below, granted a stay on condition of payment of 30% of the demanded tax and on executing simple bond for the balance amount before the Assessing Authority within one month from the date of receipt of the order.

2. In the Original Petition, the contention of the petitioner is essentially that the entire demand against the petitioner is barred by limitation, and hence, the Tribunal ought to have granted a complete stay of recovery of balance tax pending disposal of the appeal.

3. We have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

4. On a consideration of the rival submissions, we find from a perusal of the

impugned order of the Tribunal that the Tribunal had considered the argument of the petitioner that the assessment was time barred and found that inasmuch as two authorities below had considered the ground of limitation and decided the issue against the assessee, the final determination of the issue regarding limitation could be done only at the stage of hearing of the appeal and not at the interim stage. It was under those circumstances that the Tribunal directed the payment of 30% of the demanded tax as a condition for stay of the balance amounts pending disposal of the appeal. We find no infirmity in the said order of the Tribunal, and hence, we dismiss this O.P.(Tax).

Taking note of the submission of the learned counsel for the petitioner that the petitioner would require some time to make the payment directed in the impugned order of the Tribunal, we direct that if the petitioner complies with the directions in Ext.P5 order within one month from today, then the same shall be treated as in compliance with the directions in Ext.P5 order and the Tribunal shall thereafter proceed to hear the appeal on merits.