IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 2118 of 2015 (L)

PETITIONER :

YASER ARAFATH, PROPRIETOR,
HAMCO METALS, THEYYIL HOUSE
MUNDUR, PALAKKAD

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS :
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1. **THE COMMERICAL TAX OFFICER - IV,**
   FIRST CIRCLE, PALAKKAD-678 001

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

3. **THE INSPECTING ASSISTANT COMMISSIONER (APPEALS)**
   DEPARTMENT OF COMMERCIAL TAXES, PALAKKAD-678001

BY SENIOR GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 2118 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1: **TRUE COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2007-08(CST) DATED 04.02.2014.**

EXT P2: **TRUE COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2008-09(CST) DATED 04.02.2014.**

EXT P3: **TRUE COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2009-10(CST) DATED 04.02.2014.**

EXT P4: **TRUE COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2010-11(CST) DATED 04.02.2014.**

EXT P5: **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2007-08 DATED 13.08.2014.**

EXT P6: **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2008-09 DATED 13.08.2014.**

EXT P7: **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2009-10 DATED 13.08.2014.**

EXT P8: **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2010-11 DATED 13.08.2014.**

EXT P9: **TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2007-08 DATED 13.08.2014.**

EXT P10: **TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2008-09 DATED 13.08.2014.**

EXT P11: **TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2009-10 DATED 13.08.2014.**

EXT P12: **TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2010-11 DATED 13.08.2014.**

EXT P13: **TRUE COPY OF THE STAY ORDER PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2007-08 DATED 29.11.2014.**

EXT P14: **TRUE COPY OF THE STAY ORDER PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2008-09 DATED 29.11.2014.**

EXT P15: **TRUE COPY OF THE STAY ORDER PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2009-10 DATED 29.11.2014.**

EXT P16: TRUE COPY OF THE STAY ORDER PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2010-11 DATED 29.11.2014.

EXT P17: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY 3RD RESPONDENT FOR THE YEAR 2007-08 DATED 28.05.2014.

EXT P18: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY 3RD RESPONDENT FOR THE YEAR 2008-09 DATED 28.05.2014.

EXT P19: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY 3RD RESPONDENT FOR THE YEAR 2009-10 DATED 28.05.2014.

EXT P20: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSED BY 3RD RESPONDENT FOR THE YEAR 2010-11 DATED 28.05.2014

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.2118 of 2015

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Dated this the 21st day of January, 2015

<u>J U D G M E N T</u>

The writ petition is filed challenging Ext.P13 to P16 conditional stay orders passed by the 2nd respondent in stay applications filed along with appeals against CST assessment orders for the assessment years 2007-2008 to 2010-2011. The contention of the petitioner is that in Exts.P13 to P16 orders, the 2nd respondent has not furnished any reason while imposing condition for the grant of stay of recovery pending disposal of the appeals. On a perusal of Exts.P13 to P16 orders, however, I note that the 2nd respondent has considered the submissions made by the petitioner and found that the petitioner had not filed or produced any documentary evidence regarding submission of entire C Forms before the assessing authority. It was on that basis that the 2nd respondent found that the petitioner had made out only a prima facie case for a conditional order of stay and that he was not entitled to get an absolute stay of recovery of the amounts confirmed against him in the assessment orders.

2. I am of the view that Exts.P13 to P16 orders do not merit interference in these proceedings under Article 226 of the

Constitution of India. Resultantly, the writ petition, in its challenge against the said orders, fails, and is accordingly dismissed.

Counsel for the petitioner would submit that the financial position of the petitioner is such that he will not be able to comply with the conditions imposed in Ext.P13 to P16 orders within the time granted therein. Taking note of the said submission, I direct that, if the petitioner pays the amounts, directed to be paid in Exts.P13 to P16 orders, in three equal successive monthly instalments commencing from 31.01.2015. Then he shall be deemed to have complied with the directions in Exts.P13 to P16 orders for the purposes of grant of the stay envisaged therein. It is made clear that if the petitioner defaults in any of the aforementioned conditions then he will lose the benefit of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/