IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).NO. 2375 OF 2015 (V)

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PETITIONER(S):

M/S.KANDANKUTTY & SONS
SEA QUEEN HOTEL, BEACH ROAD
KOZHIKODE-673 001 REPRESENTED BY ITS
MANAGING PARTNER AJAIKUMAR

BY ADVS.SRI.THOMAS ABRAHAM
DR.K.P.PRADEEP

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY TO TAXES GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001

2. ASSISTANT COMMISSIONER (ASSESSMENT)
SPECIAL CIRCLE-1
DEPARTMENT OF COMMERCIAL TAXES KOZHIKODE - 673 001

3. INTELLIGENCE OFFICER
SQUAD NO.1, DEPARTMENT OF COMMERCIAL TAXES
KOZHIKODE 673 001

4. DEPUTY TAHSILDAR (RR)
DEPARTMENT OF REVENUE, TALUK OFFICE, KOZHIKODE-673001

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 2375 OF 2015 (V)
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APPENDIX

PETITIONER(S)' EXHIBITS
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EXT.P1 TRUE COPY OF THE ORDER IN APPEAL IN STA NO.239/2008 DATED 6-1-2012 OF THE DEPUTY COMMISSIONER (APPEALS)-II DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE

EXT.P2 -TRUE COPY OF THE ORDER NO.TCR 09/2008-09 DATED 7-1-2014 ISSUED BY THE 3RD RESPONDENT IMPOSING PENALTY UNDER SECTION 45A OF THE KGST ACT 1963

EXT.P3 - TRUE COPY OF THE RR NOTICE NO.2014/4362/11/400 DATED 10-11-2014 ISSUED UNDER SECTION 7 OF THE RR ACT BY THE 4TH RESPONDENT

EXT.P3(A) - TRUE COPY OF THE RR NOTICE NO.2014/4362/11/400 DATED 10-11-2014 ISSUED UNDER SECTION 34 OF THE RR ACT BY THE 4TH RESPONDENT

RESPONDENT(S)' EXHIBITS:NIL
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//TRUE COPY//

P.A TO JUDGE

**A.K.JAYASANKARAN NAMBIAR, J.**
**------------------------------**
**W.P.(C).NO.2375 OF 2015**
**---------------------------------**
**Dated this the 29th day of January, 2015**

**J U D G M E N T**

The petitioner who was a dealer under the Kerala Value Added Tax Act, has been served with Exts.P3 and P3(a) notices under the Revenue Recovery Act, for recovery of the amounts due from the petitioner as per Ext.P2 order of the 3rd respondent. In Exts.P3 and P3(a), over and above the tax amounts that were found due from the petitioner, there is also an amount stated to be due from the petitioner by way of collection charges under the Kerala Revenue Recovery Rules. In the writ petition, the limited prayer of the petitioner is for the grant of instalments to discharge the liability in Exts.P3 and P3(a) notices.

2. I have heard Sri.Thomas Abraham, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and taking into account the plea of financial hardship urged on behalf of the

petitioner, I dispose the writ petition with the following directions:

i. If the petitioner pays the total amount demanded in Exts.P3 and P3(a) notices in eight equal successive monthly instalments commencing from 15.02.2015, then recovery steps pursuant to Exts.P3 and P3(a) shall be kept in abeyance.

ii. It is made clear that if the petitioner defaults in any single instalment, he will lose the benefit of this judgment and the respondents shall proceed with the recovery steps from the stage at which they presently stand.

iii. It is further made clear that, in respect of the collection charges that are mentioned in Exts.P3 and P3(a) notices, the payment by the petitioner of the said charges, pursuant to this judgment, shall be provisional and, in the event of the Supreme Court deciding the issue of recovery of collection charges by the State Government in favour of the petitioner, it will be open to the petitioner to seek refund of the said amounts paid pursuant to this judgment.

The writ petition is disposed as above.

**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

mns