IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 3566 of 2015 (U)

PETITIONER:

THE WANDOOR TILE WORKERS
INDUSTRIAL CO-OPEATIVE SOCITY LTD.
(KVIND(M)33), NADUVATH.P.O., WANDOOR,
MALAPPURAM DISTRICT-679 328,
REPRESENTED BY ITS PRESIDENT, SRI.M.ALAVI.

BY ADVS.SRI.E.P.GOVINDAN
SMT.G.DEEPA
SRI.K.G.SOMANATH

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   NILAMBUR, MALAPPURAM DISTRICT - 679 329.

2. **THE ASST. COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, COMMERCIAL TAX COMPLEX,
   PALAKKAD - 678 001.

3. **THE DEPUTY TAHSILDAR (RR),**
   NILAMBUR TALUK, MALAPPURAM DISTRICT - 679 329.

4. **THE STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY,
   TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
   TRIVANDRUM, PIN - 695 001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

P1- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.377/14 IN KVATA.593/14 FOR 2008-09.

P1(A)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.378/14 IN KVATA.594/14 FOR 2009-10.

P1(B)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.379/14 IN KVATA.595/14 FOR 2010-11.

P1(C)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.380/14 IN KVATA.596/14 FOR 2011-12.

P1(D)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.382/14 IN KVATA.598/14 FOR APRIL 2012 TO JULY,2013.

P1(E)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.381/14 IN KVATA.597/14 FOR AUG.12 TO MARCH, 2013.

P1(F)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.383/14 IN KVATA.599/14 FOR APRIL, 2013.

P1(G)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.384/14 IN KVATA.600/14 FOR MAY, 2013.

P1(H)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.385/14 IN KVATA.601/14 FOR JUNE, 2013.

P1(I)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.386/14 IN KVATA.602/14 FOR JULY, 2013.

P1(J)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.387/14 IN KVATA.603/14 FOR AUG., 2013.

P1(K)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.388/14 IN KVATA.604/14 FOR SEPT., 2013.

P1(L)- TRUE COPY OF THE STAY ODER DT. 22.1.2015 IN I.A.389/14 IN KVATA.605/14 FOR OCT., 2013.

P2- TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 28.1.2014 FOR THE YEARS 2008-09.

P2(A)- TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 28.1.2014 FOR THE YEARS 2009-10.

P2(B)- TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 28.1.2014 FOR THE YEARS 2010-11.

P2(C)- TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 28.1.2014 FOR THE YEARS 2011-12.

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P2(D)-	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 28.1.2014 FOR THE YEARS 2012-13.**
P2(E)-	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 10.3.2014 FOR AUG. TO MARCH, 2013.**
P2(F)-	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 10.3.2014 FOR APRIL, 2013.**
P2(G)-	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 10.3.2014 FOR MAY, 2013.**
P2(H)-	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 10.3.2014 FOR JUNE, 2013.**
P2(I)-	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 10.3.2014 FOR JULY, 2013.**
P2(J)-	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 10.3.2014 FOR AUG., 2013.**
P2(K)-	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 10.3.2014 FOR SEPT., 2013.**
P2(L)-	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DT. 10.3.2014 FOR OCT., 2013.**
P3-	**TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR 2008-09.**
P3(A)-	**TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR 2009-10.**
P3(B)-	**TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR 2010-11.**
P3(C)-	**TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR 2011-12.**
P3(D)-	**TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR APRIL TO JULY, 2012.**
P3(E)-	**TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR AUG. 2012 TO MARCH, 2013.**
P3(F)-	**TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR APRIL, 2013.**
P3(G)-	**TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR MAY, 2014.**
P3(G)-	**TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR MAY, 2014.**

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P3(H)- TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR JUNE, 2013.

P3(I)- TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR JULY, 2013.

P3(J)- TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR AUG., 2013.

P3(K)- TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR SEPT., 2013.

P3(L)- TRUE COPY OF THE APPEAL MEMORANDUM DT. 15.9.2014 FILED BEFORE THE SECOND RESPONDENT FOR OCT., 2013.

P4- TRUE COPY OF THE CERTIFICATE DT. 12.1.2010 ISSUED BY THE KERALA KHADI & VILLAGE INDUSTRIES BOARD, TRIVANDRUM FROM 1.4.2008 TO 31.3.2009.

P4(A)- TRUE COPY OF THE CERTIFICATE DT. 16.6.2010 ISSUED BY THE KK & VIB FROM 1.4.2009 FROM 1.4.2009 TO 31.3.2010.

P4(B)- TRUE COPY OF THE CERTIFICATE DT. 9.12.2011 ISSUED BY THE KK & VIB FROM 1.4.2010 TO 31.3.2011.

P4(C)- TRUE COPY OF THE CERTIFICATE DT. 18.11.2014 ISSUED BY THE KK & VIB FROM 1.4.2011 TO 31.3.2012.

P4(D)- TRUE COPY OF THE CERTIFICATE DT. 18.11.2014 ISSUED BY THE KK & VIB FROM 1.4.2012 TO 31.3.2013.

P4(E)- TRUE COPY OF THE CERTIFICATE DT. 18.11.2014 ISSUED BY THE KK & VIB FROM 1.4.2013 TO 31.3.2014.

P5- TRUE COPY OF THE REVENUE RECOVERY NOTICE DT. 25.8.2014 ISSUED BY THE THIRD RESPONDENT FOR 1.4.2014.

P5(A)- TRUE COPY OF THE REVENUE RECOVERY NOTICE DT. 25.8.2014 ISSUED BY THE THIRD RESPONDENT FOR 17.7.2014.

P5(B)- TRUE COPY OF THE REVENUE RECOVERY NOTICE DT. 25.8.2014 ISSUED BY THE THIRD RESPONDENT 1.5.2014.

P6- TRUE COPY OF THE ATTACHEMENT ORDER DT. 23.12.2014 ISSUED BY THE THIRD RESPONDENT.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.3566 of 2015 (U)

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Dated this the 4th day of February, 2015

JUDGMENT

Against Ext.P2 series of assessment orders passed under the Kerala Value Added Tax Act, 2003, for the assessment years 2008 - 2009 to 2013 - 2014, the petitioner had preferred Ext.P3 series of appeals and stay petitions before the 2nd respondent. The 2nd respondent considered the stay petitions preferred by the petitioner and passed Ext.P1 series of stay orders, directing the petitioner to pay 30% of the amounts confirmed against him by the assessment orders as a condition for the grant of stay pending disposal of the appeals. In the writ petition, the said orders of the 2nd respondent are impugned.

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

3. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I note that the contention of the petitioner is essentially that, he enjoyed the benefit of an exemption from payment of tax, by virtue of Ext.P4 series of certificates issued by the Kerala Khadi And Village Industries Board, Thiruvananthapuram. It is seen from a perusal of the impugned orders that, although, the certificates were

produced before the 2nd respondent at the time of consideration of the stay petitions, the 2nd respondent has not taken note of the said exemption certificates while passing orders in the matter.

4. I am of the view that, when certificates of exemption were produced by the petitioner before the 2nd respondent, it was incumbent upon the 2nd respondent to consider the effect of these certificates, more so because, the case of the petitioner is that, by virtue of the said certificates, he will be entitled to a complete exemption from tax. Thus, in order to enable the 2nd respondent to have a fresh look into the matter, I quash Ext.P1 series of orders and direct the 2nd respondent to pass fresh orders in the matter, after hearing the petitioner and after taking note of Ext.P4 series of certificates. The 2nd respondent shall pass orders as directed above, within a period of two months from the date of receipt of a copy of this judgment. It is made clear that, recovery steps for recovery of the amounts confirmed against him by the assessment orders in question, shall be kept in abeyance till such time as the 2nd respondent passes orders, as directed above, and communicates the same to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/05/02/