IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 4278 of 2014 (H)

PETITIONER :

M/S.K.R.TOURIST HOME (HOTEL HILTON),
REPRESENTED BY ITS MANAGING PARTNER,
D.RAJKUMAR, VARKALA, THIRUVANANTHAPURAM.

BY ADVS.SRI.A.SUDHI VASUDEVAN
SMT.K.PUSHPAVATHI

RESPONDENT(S):

----

1. **INTELLIGENCE OFFICER,**
   SQUAD NO.1, DEPARTMENT OF COMMERCIAL TAXES, 'C' BLOCK,
   REVENUE COMPLEX, THIRUVANANTHAPURAM-695 033.

2. **COMMERCIAL TAX OFFICER,**
   ATTINGAL, THIRUVANANTHAPURAM-695 001

3. **DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, THIRUVANANTHAPURAM-695 001

R1 TO R3 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 4278 of 2014 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: **COPY OF THE PRINT OUT OF THE ON LINE APPLICATION SUBMITTED ON 14.5.2012 BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR PAYMENT OF TAX AT THE COMPOUNDED RATE U/S 8 OF THE KVAT ACT 2003 IN RESPECT OF COOKED FOOD AT THE HOTEL OF THE PETITIONER.**

P2: **COPY OF THE PRINT OUT OF THE ON LINE APPLICATION SUBMITTED ON 14.5.2012 BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR PAYMENT OF TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF THE KGST ACT IN RESPECT OF SALE OF LIQUOR AT THE HOTEL OF THE PETITIONER FOR THE YEAR 2012-13.**

P3: **COPY OF THE MONTHLY RETURN FOR THE MONTH APRIL 2012 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 21.5.2012 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.**

P4: **COPY OF THE MONTHLY RETURN FOR THE MONTH MAY 2012 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 19.6.2012 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.**

P5: **COPY OF THE MONTHLY RETURN FOR THE MONTH JUNE 2012 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 18.7.2012 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.**

P6: **COPY OF THE MONTHLY RETURN FOR THE MONTH JULY 2012 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 22.8.2012 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.**

P7: **COPY OF THE MONTHLY RETURN FOR THE MONTH AUGUST 2012 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 19.9.2012 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.**

P8: **COPY OF THE MONTHLY RETURN FOR THE MONTH SEPTEMBER 2012 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 17.10.2012 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.**

P9: COPY OF THE MONTHLY RETURN FOR THE MONTH OCTOBER 2012 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 17.11.2012 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.

P10: COPY OF THE MONTHLY RETURN FOR THE MONTH NOVEMBER 2012 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 21.12.2012 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.

P11: COPY OF THE MONTHLY RETURN FOR THE MONTH DECEMBER 2012 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 16.1.2013 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.

P12: COPY OF THE MONTHLY RETURN FOR THE MONTH JANUARY 2013 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 19.2.2013 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.

P13: COPY OF THE MONTHLY RETURN FOR THE MONTH FEBRUARY 2013 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 20.3.2013 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.

P14: COPY OF THE MONTHLY RETURN FOR THE MONTH MARCH 2013 ACCOMPANIED BY THE RECEIPT EVIDENCING E-PAYMENT ON 27.5.2013 AS REGARDS THE VALUE ADDED TAX AT THE COMPUNDED RATE U/S 8 OF KVAT AND TURNOVER TAX AT THE COMPOUNDED RATE U/S 7 OF KGST ACT SUBMITTED BY THE PETITIONER.

P15: COPY OF THE ANNAUL RETURN SUBMITTED THROUGH ONLINE BY THE PETITIONER COMMENCING FROM APRIL 2012 TO 31 MARCH 2013 RELATING TO THE TAX PAYABLE AS PER THE COMPOUNDED RATE IN RESPECT OF COOKED FOOD UNDER KVAT AND THE TURNOVER TAX AT THE COMPOUNDED RATE IN RESPECT OF LIQUOR UNDER SECTION 7 OF KGST ACT.

P16: COPY OF THE SHOP INSPECTION REPORT DATED 9.11.2012 PREPARED BY THE 1ST RESPONDENT.

P17: COPY OF THE REPRESENTATION DATED 10.11.2012 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P18: COPY OF THE REPRESENTATION DATED 24.7.2013 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

WP(C).NO.4278/2014

P19: COPY OF THE ORDER DATED 14.8.2013 U/S.45 A OF THE KGST ACT 1963 STYLED AS NOTICE ISSUED BY THE 2ND RESPONDENT.

P20: COPY OF THE ORDER DATED 29.8.2013 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

P21: COPY OF THE ORDER DATED 31.8.2013 ISSUED BY THE 1ST RESPONDENT U/S 45 A OF KGST ACT.

P22: COPY OF THE REVISION DATED 30.11.2013 FILED BY THE PETITIONER.

P23: COPY OF THE STAY PETITION DATED 30.11.2013 FILED BY THE PETITIONER.

P24: COPY OF THE PETITION DATED 30.11.2013 FOR URGENT HEARING OF REVISION FILED BY THE PETITIONER.

P25: COPY OF THE JUDGMENT DATED 17.12.2013 IN WPC.21952 OF 2013 PASSED BY THIS HON'BLE COURT.

P26: COPY OF ORDER DATED 21.1.2014 PASSED BY THE 3RD RESPONDENT.

P27: COPY OF THE CIRCULAR DATED 31.3.2011 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES THIRUVANANTHAPURAM.

P28: COPY OF CIRCULAR NO.10/2012 DATED 28.4.2012 ISSUED BY COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

RESPONDENT(S)' EXHIBITS

R2(A): COPY OF THE TAX PAID DETAILS OF IMFL.

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) No.4278 of 2014 (H)

...

Dated this the 3rd day of February, 2015

JUDGMENT

The writ petition is filed challenging Ext.P26 order, which was passed by the 3rd respondent in an appeal preferred by the petitioner, against Ext.P21 order of penalty for the year 2012 - 2013 under the Kerala Value Added Tax Act, 2003.

2. Ext.P26 order is impugned, inter alia, on the ground that the 3rd respondent, while passing orders in the stay petition, had not exercised his discretion validly in that, there are no reasons forthcoming from Ext.P26 order as to why it was thought fit to impose a condition requiring the petitioner to pay 30% of the disputed amount as a condition for grant of stay of recovery of the penalty amounts confirmed against him. I note that Ext.P26 order is dated 21.01.2014 and the writ petition challenging it has been pending before this Court since February, 2014. Though, the 2nd respondent has filed an affidavit stating the details of the turnover sales conceded by the petitioner and the turnover tax actually paid by him for the relevant year, the fact remains that the exercise of discretion by the 3rd respondent, while passing Ext.P26 order is legally flawed.

3. Be that as it may, I am of the view that, on account of the

passage of time, it may not be prudent now to relegate the matter back to the 3rd respondent for a fresh consideration of the stay petition. Under these circumstances, I quash Ext.P26 order and direct the 3rd respondent, or such other competent authority to whom the files may have been transferred, to consider and pass orders on Ext.P22 revision, preferred by the petitioner against Ext.P21 order of penalty, within a period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner.

4. It is made clear that pending disposal of Ext.P22 revision by the 3rd respondent, or such other competent authority, as directed above, and communication of the orders on the same to the petitioner, recovery steps for realisation of any amount confirmed against the petitioner by Ext.P21 order shall be kept in abeyance.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/03/02/