IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 7077 of 2015 (H)

PETITIONER(S) :

KITEX LTD, KIZHAKKAMBALAM,
ALUVA, REPRESENTED BY DIRECTOR.

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.C.S.SULEKHA BEEVI
SMT.ROSIE ATHULYA JOSEPH

RESPONDENT(S) :

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1. ASSISTANT COMMISSIONER - II,
COMMERCIAL TAXES, SPECIAL CIRCLE, PERUMBAVOOR, PIN- 683 542.

2. THE DEPUTY COMMISSIONER (APPEALS),
ERNAKULAM, PIN- 682 030.

3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, MUVATTUPUZHA, PIN - 686 661.

4. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY (TAXES), SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 7077 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **TRUE COPY OF THE ASSESSMENT ORDER DATED 07/11/2014 FOR THE MONTH MAY (2014-15) ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT.**

EXT.P2: **TRUE COPY OF THE ASSESSMENT ORDER DATED 07/11/2014 FOR THE MONTH JULY (2014-15) ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT.**

EXT.P3: **TRUE COPY OF THE ASSESSMENT ORDER DATED 07/11/2014 FOR THE MONTH AUGUST (2014-15) ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT.**

EXT.P4: **TRUE COPY OF THE ASSESSMENT ORDER DATED 07/12/2014 FOR THE MONTH SEPTEMBER (2014-15) ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT.**

EXT.P5: **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P6: **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P7: **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P8: **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P9: **TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P10: **TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P11: **TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P12: **TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P13: **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P14: **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P15: **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

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EXT.P16: TRUE COPY OF THE DELAY PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P17: TRUE COPY OF THE NOTICE DATED 31/01/2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER (MAY).

EXT.P18: TRUE COPY OF THE NOTICE DATED 31/01/2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER (JULY).

EXT.P19: TRUE COPY OF THE NOTICE DATED 31/01/2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER (AUGUST).

EXT.P20: TRUE COPY OF THE NOTICE DATED 31/01/2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER (SEPTEMBER).

EXT.P21: TRUE COPY OF THE ORDER NO. KVAT 3059/2014, DATED 31/12/2014 PASSED BY THE DY.COMMISSIONER (APPEALS).

EXT.P22: TRUE COPY OF THE ORDER NO. 281A/2015 DATED 25/02/2015, PASSED BY THE DEPUTY COMMISSIONER (APPEALS) (2014-2015 (05/14)).

EXT.P22(A): TRUE COPY OF THE ORDER NO. 282/2015, DATED 25/02/2015, PASSED BY THE DEPUTY COMMISSIONER (APPEALS) (2014-15)(07/14)).

EXT.P22(B): TRUE COPY OF THE ORDER NO. 283/2015, DATED 25/02/2015, PASSED BY THE DEPUTY COMMISSIONER (APPEALS), (2014-2015 (08/14)).

EXT.P22(C): TRUE COPY OF THE ORDER NO. 284/2015, DATED 25/02/2015, PASSED BY THE DEPUTY COMMISSIONER (APPEALS) (2014-15 (09/14)).

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7077 OF 2015 (H)

Dated this the 5th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P22 series of orders passed by the 2nd respondent, dismissing the stay petitions preferred by the petitioner, in appeals filed against the assessment orders confirming a demand of turnover tax on textiles, in accordance with Section 6A of the KVAT Act. It is the case of the petitioner that, if the 2nd respondent was dismissing the stay petitions, by going into the merits of the issue, then nothing prevented the 2nd respondent from disposing the appeals itself, and in that event, the petitioner would have had a right of second appeal against the decision of the 2nd respondent.

2. I have heard Sri.Anil D. Nair, the learned counsel appearing for the petitioner as also Sri.Sudheesh Kumar, the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that inasmuch as

the 2nd respondent has chosen to dismiss the stay petitions filed by the petitioner, the 2nd respondent ought to have proceeded to hear the appeals itself on an early date, rather than insist on a deposit of tax pending disposal of the appeal pursuant to a dismissal of the stay petition. In that view of the matter, I feel that the 2nd respondent should be directed to hear the appeals expeditiously. Accordingly, I dispose the writ petition with a direction to the 2nd respondent to consider and pass orders in the appeals preferred by the petitioner, against the orders confirming the demand of turnover tax under Section 6A of the KVAT Act. The 2nd respondent shall consider and pass orders in the appeal within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. I make it clear that recovery steps for recovery of the amounts confirmed against the petitioner, by the assessment orders in question, shall be kept in abeyance subject to the petitioner remitting 30% of the amounts confirmed against him by the assessment orders, on or before 28.3.2015.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp