IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 7601 of 2015 (A)

PETITIONER(S):

M/S.LARSEN & TURBO LIMITED
HEAVY ENGINEERING DIVISION, POWAI CAMPUS
SAKI VIHAR ROAD, P.O.BOX NO.8901, MUMBAI - 400 072
REPRESENTED BY ITS MANAGER, MR.ISWARAN A.G.

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD

RESPONDENT(S):
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1. DEPUTY COMMISSIONER (APPEALS)
ERNAKULAM - 682 016.

2. DEPUTY COMMISSIONER (ASSESSMENT),
ERNAKULAM - 682 016.

3. THE INTELLIGENCE OFFICER (IB) II,
O/O.THE DEPUTY COMMISSIONER (INTELLIGENCE)
DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE - 673 001.

R BY GOVERNMENT PLEADER, SMT. SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 7601 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. **TRUE COPY OF THE JUDGMENT OF THE KERALA HIGH COURT IN FI-DESIGN & DEVELOPMENT PVT. LTD. VS. STATE OF KERALA.**

EXHIBIT P2. **TRUE COPY OF THE CLARIFICATION U/S.94 OF THE KERALA VALUE ADDED TAX ACT, 2003-ORDER NO.C3/24336/11/CT DATED 28.03.2012.**

EXHIBIT P3. **TRUE COPY OF THE JUDGMENT OF THE KARNATAKA HIGH COURT IN THE CASE OF ASEA BROWN BOVERI LTD. VS. STATE OF KARNATAKA.**

EXHIBIT P4. **TRUE COPY OF THE JUDGMENT OF THE LARSEN & TOUBRO LTD. VS. COMMISSIONER OF COMMERCIAL TAXES.**

EXHIBIT P5. **TRUE COPY OF THE JUDGMENT OF THE KARNATAKA HIGH COURT IN THE CASE OF STATE OF KARNATAKA AND OTHERS VS ECE INDUSTRIES LIMITED ((2006) 144 STC 608).**

EXHIBIT P6. **TRUE COPY OF THE PENALY ORDER FOR THE ASSESSMENT YEARS 2004-05 DATED 31.07.2014.**

EXHIBIT P7. **TRUE COPY OF THE PENALY ORDER FOR THE ASSESSMENT YEARS 2005-06 DATED 31.07.2014.**

EXHIBIT P8. **TRUE COPY OF THE PENALY ORDER FOR THE ASSESSMENT YEARS 2006-07 DATED 31.07.2014.**

EXHIBIT P9. **TRUE COPY OF THE PENALY ORDER FOR THE ASSESSMENT YEARS 2007-08 DATED 31.07.2014.**

EXHIBIT P10. **TRUE COPY OF CLARIFICATION ORDERS IN M/S AGS INFOTECH PVT.LTD. DATED 05.04.2011.**

EXHIBIT P11. **TRUE COPY OF THE CLARIFICATION ORDER DATED 14.11.2012 IN FI-DESIGN.**

EXHIBIT P12. **TRUE COPY OF THE JUDGMENT IN WRIT PETITION NO.27784/2014 DATED 03.10.2014.**

EXHIBIT P13. **TRUE COPY OF THE MEMORANDUM OF APPEAL FOR THE PERIOD 2004-05.**

EXHIBIT P14. **TRUE COPY OF THE APPLICATION FOR STAY FILED THEREIN FOR THE PERIOD 2004-05.**

EXHIBIT P15. **TRUE COPY OF THE MEMORANDUM OF APPEAL FOR THE PERIOD 2005-06.**

EXHIBIT P16. **TRUE COPY OF THE MEMORANDUM OF APPEAL FOR THE PERIOD 2006-07.**

EXHIBIT P17. **TRUE COPY OF THE MEMORANDUM OF APPEAL FOR THE PERIOD 2007-08.**

EXHIBIT P18. **TRUE COPY OF THE APPLICATION FOR STAY FILED FOR THE PERIOD 2005-06.**

EXHIBIT P19. **TRUE COPY OF THE APPLICATION FOR STAY FILED FOR THE PERIOD 2006-07.**

EXHIBIT P20. **TRUE COPY OF THE APPLICATION FOR STAY FILED FOR THE PERIOD 2007-08.**

EXHIBIT P21. **TRUE COPY OF THE COMMON ODER 2005-06, 2006-7 AND 2007-08 DATED 13.02.2015.**

EXHIBIT P22. **TRUE COPY OF THE ORDER FOR 2004-05 DATED 03.03.2015.**

EXHIBIT P23. **A TRUE COPY OF THE QUARTERLY RETURN FILED ON 31.12.2014.**

EXHIBIT P24. **TRUE COPY OF THE MONTHLY RETURN FOR THE MONTH OF JANUARY, 2015.**

EXHIBIT P25. **TRUE COPY OF THE AUDIT REPORT DATED 23.01.2015.**

EXHIBIT P26. **A TRUE COPY OF THE COMMUNICATION DATED 05.02.2015.**

RESPONDENT'S EXHIBITS:-
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// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 7601 of 2015

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Dated this the 19th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P21 and P22 conditional orders of stay passed by the 2nd and 1st respondents respectively. The challenge against the said orders in the writ petition is essentially that, the 2nd and 1st respondents have acted mechanically and not exercised their discretion validly while passing the said conditional orders directing the petitioner to effect payment of certain portion of the demand confirmed against him, while granting stay of recovery of the balance amounts, pending disposal of the appeals/revision.

2. I have heard Sri.A.Kumar, the learned counsel appearing for the petitioner and also Smt. Sobha Annamma Eappen, the learned Government Pleader as well.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I dispose the writ petition with the following directions:-

(i) In Ext.P21 order, that has been passed in the revision petition filed by the petitioner against penalty orders for the assessment years 2005-06, 2006-07 and 2007-08 under the KVAT Act, the 2nd respondent does not give any reasons to support his findings, that the petitioner would be required to remit 30% of the total amount demanded as a condition for the grant of stay of recovery of the balance amount pending disposal of the revision application. This Court has held in Archana Agencies v. Commercial Tax Officer **[2014 (2) KLT 715]** that an authority considering a stay petition is bound to give reasons even while granting conditional stay.

(ii) Inasmuch as Ext.P21 order does not give any such reason, I quash Ext.P21 order and direct the 2nd respondent to pass fresh orders in the stay petitions preferred by the petitioner in the revision petitions referred to above. The 2nd respondent shall pass fresh orders, after hearing the petitioner, within a period of two months from the date of receipt of a copy of this judgment.

(iii) The recovery steps, if any, against the petitioner for recovery of the amounts confirmed by the orders of penalty, against which the revision petition has been filed, shall be kept in abeyance till such time as fresh orders are passed by the 2nd respondent, as directed above, and communicated to the petitioner.

(iv) As regards Ext.P22 order of the 1st respondent, passed in an appeal against an order imposing penalty for the assessment year 2004-05, I find that the direction in Ext.P22 obliging the petitioner to remit 50% of the tax amount involved as a condition for the grant of stay, has been passed after considering the prima facie case of the petitioner on merits, and to that extent, the said order cannot be said to be illegal or vitiated by any improper exercise of discretion by the 1st respondent. I take note of the contention of the petitioner, however, that he would require some time to comply with the directions therein, and grant him time upto 31.03.2015 to comply with the directions in Ext.P22 order. Save for this limited modification, I am not inclined to interfere with Ext.P22 order in this proceedings under Article 226 of the Constitution of India.

Thus, the writ petition is disposed by quashing Ext.P21 order and sustaining Ext.P22 order as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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