**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. 8748 of 2015 (P)**
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**PETITIONER(S):**
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**K.A.NAZAR, AGED 47 YEARS**
**PROPRIETOR, AKBAR TRADING COMPANY, KARAPPUZHA P.O.**
**KOTTAYAM DISTRICT.**

**BY ADVS.SRI.K.N.SREEKUMARAN**
**SRI.P.D.UNNIKKANNAN NAIR**

**RESPONDENT(S)/RESPONDENTS:**
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1. **INTELLIGENCE OFFICER (IB)**
   **COMMERCIAL TAXES, SASTRI ROAD, KOTTAYAM - 686 001.**

2. **DEPUTY COMMISSIONER**
   **COMMERCIAL TAXES, KOTTAYAM - 686 001.**

3. **INSPECTING ASSISTANT COMMISSIONER**
   **COMMERCIAL TAXES, KOTTAYAM - 686 001.**

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

**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. 8748 of 2015 (P)**
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**
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**EXT.P1: TRUE COPY OF THE PENALTY ORDER DATED 28/02/2014 FOR 2007 - 2008 ISSUED BY THE 1ST RESPONDENT.**

**EXT.P2: TRUE COPYOF THE PENALTY ORDER DATED 28/02/2014 FOR 2008 - 2009 ISSUED BY THE 1ST RESPONDENT.**

**EXT.P3: TRUE COPY OF THE PENALTY ORDER DATED 28/02/2014 FOR 2009 - 2010 ISSUED BY THE 1ST RESPONDENT.**

**EXT.P4: TRUE COPY OF THE REVISION PETITION FILED AGAINST EXT.P1 BEFORE THE 2ND RESPONDENT ON 17/11/2014 BY PETITIONER.**

**EXT.P4(A): TRUE COPY OF THE STAY PETITION FILED IN EXT.P5 REVISION.**

**EXT.P5: TRUE COPY OF THE REVISION PETITION FILED AGAINST EXT.P2 BEFORE THE 2ND RESPONDENT ON 12/11/2014 BY PETITIONER.**

**EXT.P5(A): TRUE COPY OF THE STAY PETITION FILED IN EXT.P5 REVISION.**

**EXT.P6: TRUE COPY OF THE REVISION PETITION FILED AGAINST EXT.P3 BEFORE THE 2ND RESPONDENT ON 12/11/2014 BY PETITIONER.**

**EXT.P6(A): TRUE COPY OF STAY PETITION FILED IN EXT.P6 REVISION.**

**EXT.P7: TRUE COPIES OF THE DEMAND NOTICES IN FORM NO. 1 BEARING NOS. A5-1585/14-15 (RRC 284/14-15, 285/14-15 & 286/14-15 DATED 06/11/2014 FOR 2007 - 2008, 2008 - 2009 & 2009 - 2010 ISSUED BY THE 3RD RESPONDENT TO PETITIONER.**

**EXT.P8: TRUE COPY OF THE JUDGMENT DATED 20/12/2014 IN WPC 35188/2014.**

**EXT.P9: TRUE COPIES OF THE STATMENT OF PURCHASES FOR 2007 - 2008 TO 2009 - 2010 ALONG WITH SAMPLE COPIES OF INVOICES.**

**EXT.P10: TRUE COPY OF THE STAY ORDER BEARING NO. RP 239 DATED 28/02/2015 FOR 2007 - 2008 OF THE 2ND RESPONDENT.**

**EXT.P11: TRUE COPY OF THE STAY ORDER BEARING NO. RP 240 DATED 28/02/2015 FOR 2008 - 2009 OF THE 2ND RESPONDENT.**

**EXT.P12: TRUE COPY OF THE STAY ORDER BEARING NO. RP 241 DATED 28/02/2015 FOR 2009 - 2010 OF THE 2ND RESPONDENT.**

**EXT.P13: TRUE COPIES OF THE ASSESSMENT ORDERS FOR 2008 0 2009 & 2009 - 2010 MADE IN M/S. FOOD, FATS & FERTILIZERS LTD., ERNAKULAM BY THE ASSISTANT COMMISSIONER, SPL.CIRCLE -I, ERNAKULAM.**

**EXT.P14: TRUE COPY OF THE FORWARDING LETTER DATED 27/01/2015 REGARDING PAYMENT OF RS.20 CRORE BY M/S.3.F INDUTRIES LTD ALONG WITH COPY OF CHEQUE.**

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

**P.S. TO JUDGE**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C).NO.8748 OF 2015 (P)**

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**Dated this the 19th day of March, 2015**

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

The challenge in the writ petition is against Exts.P10 to P12 conditional orders of stay passed by the 2nd respondent, in stay applications filed along with the revision petitions against penalty orders confirmed against the petitioner for the assessment years 2007-08, 2008-09 and 2009-10. It is the contention of the petitioner in the writ petition that, Exs.P10 to P12 orders are liable to be interfered with by this Court, on the ground that the said orders do not reflect an application of mind of the 2nd respondent, and further that the 2nd respondent has not exercised his discretion validly while insisting on a payment of the portion of the amounts, confirmed against the petitioner by the penalty orders, as a condition for stay of recovery of the balance amounts.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Exts.P10 to P12 orders, the 2nd respondent has taken note of the fact that the primary issue regarding classification, that was urged by the petitioner in the revision petitions, has already been decided against the petitioner by a judgment of this Court. It is for this reason that the 2nd respondent found that the petitioner would be entitled only a conditional order of stay and not an absolute stay against the recovery of the penalty amounts confirmed against him. Counsel for the petitioner would further point out that, even if the classification issue was found against him, the fact remains that the proceedings were for setting aside the amounts confirmed against the petitioner by way of penalty. Inasmuch as the classification of the product was effected by the petitioner, at a time when the law was in a state of flux, the petitioner could not be said to have possessed the requisite mens rea for the imposition of a penalty. In Exts.P10 to P12 orders, this aspect is not seen considered by the 2nd respondent, while considering the stay petitions. In that view of the matter, while I find that in Exts.P10 to P12 orders, the 2nd respondent has given reasons to support his decision, I also find that the plea of the petitioner with regard to lack of requisite mens rea has not been considered by the 2nd respondent. Under the said circumstances, I modify the direction in Exts.P10 to P12 orders, requiring the petitioner to effect payment of 30% of the amounts confirmed against him by the penalty orders, to read as 15% of the amounts confirmed against the petitioner by the respective orders of penalty, against which the revision petitions were filed. Resultantly, the petitioner will be required to effect payment of 15% of the amounts confirmed against him by the penalty orders, for the assessment years aforementioned, and furnish adequate security before the assessing authority for the balance amounts, on or before 31.3.2015. The said payments, if made within the time granted above, will suffice for the purposes of stay of recovery of the balance penalty amounts confirmed against the petitioner for the assessment years in question, and the 2nd respondent will proceed to hear the revision petitions on merits.

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

prp