**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937**

**WP(C).No. 15656 of 2015 (F)**
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**PETITIONER(S):**
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**H.AZAD,**
**INDIAN GLASS HOUSE, SREERAMAPURAM, PARIPPALLY,**
**KALLUVATHUKKAL P.O., KOLLAM - 691 578.**

**BY ADVS.SRI.S.SANTHOSH KUMAR**
**SMT.P.LISSY JOSE.**

**RESPONDENT(S):**
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1. **THE DEPUTY COMMISSIONER,**
   **COMMERCIAL TAXES, KOLLAM - 691 013.**

2. **THE INTELLIGENCE OFFICER (INVESTIGATION BRANCH)-II,**
   **COMMERCIAL TAX DEPARTMENT, KOLLAM - 691 013.**

3. **THE DEPUTY TAHSILDAR (RR),**
   **TALUK OFFICE, KOLLAM - 691 001.**

**BY SENIOR GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

**WP(C).No. 15656 of 2015 (F)**
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**
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**P1:TRUE COPY OF THE PENALTY ORDER DATED 30.09.2014 FOR THE YEAR 2010-11 AGAINST THE PETITIONER.**

**P1(a):TRUE COPY OF THE PENALTY ORDER DATED 30.09.2014 FOR THE YEAR 2011-12 AGAINST THE PETITIONER.**

**P1(b):TRUE COPY OF THE PENALTY ORDER DATED 30.09.2014 FOR THE YEAR 2012-13 AGAINST THE PETITIONER.**

**P2:TRUE COPY OF THE PENALTY ORDER DATED 30.09.2014 FOR THE YEAR 2012-13 AGAINST THE CONTRACTOR.**

**P2(a):TRUE COPY OF THE PENALTY ORDER DATED 30.09.2014 FOR THE YEAR 2010-11 AGAINST THE CONTRACTOR.**

**P3:TRUE COPY OF REVISION DATED 17.11.2014 FOR THE YEAR 2010-11.**

**P3(a):TRUE COPY OF REVISION DATED 17.11.2014 FOR THE YEAR 2011-12.**

**P3(b):TRUE COPY OF REVISION DATED 17.11.2014 FOR THE YEAR 2012-13.**

**P4:TRUE COPY OF THE STAY PETITION DATED 17.11.2014 FILED IN EXT P2.**

**P4(a):TRUE COPY OF THE STAY PETITION DATED 17.11.2014 FILED IN EXT P2 (a).**

**P4(b):TRUE COPY OF THE STAY PETITION DATED 17.11.2014 FILED IN EXT P2 (b).**

**P5:TRUE COPY OF THE RR DEMAND NOTICE DATED 02.12.2014 FOR THE YEAR 2010-11 ISSUED BY THE 3RD RESPONDENT.**

**P5(a):TRUE COPY OF THE RR DEMAND NOTICE DATED 02.12.2014 FOR THE YEAR 2011-12 ISSUED BY THE 3RD RESPONDENT.**

**P5(b):TRUE COPY OF THE RR DEMAND NOTICE DATED 02.12.2014 FOR THE YEAR 2012-13 ISSUED BY THE 3RD RESPONDENT.**

**P6:TRUE COPY OF THE COMMON ORDER DATED 19.01.2015 PASSED BY THE 1ST RESPONDENT.**

**P7:TRUE COPY OF THE JUDGMENT DATED 06.02.2015 IN WPC.NO.3859/2015.**

**P8:TRUE COPY OF THE PETITION DATED 28.02.2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**

**P9:TRUE COPY OF THE COMMON ORDER DATED 13.03.2015 PASSED BY THE 1ST RESPONDENT.**

**Msv/**

**WP(C).No. 15656 of 2015 (F)**
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**P10: TRUE COPY OF RETURN DTD.31.7.2013 FOR THE YEAR 2012-2013.**

**P10(a): TRUE COPY OF RETURN DTD.28.5.2014 FOR THE ASSESSMENT YEAR 2013-2014.**

**P11: TRUE COPY OF CERTIFICATE DTD.31.12.2014 ISSUED BY THE COMMERCIAL TAX OFFICER (WORKS CONTRACT), KOLLAM.**

**RESPONDENT(S)' EXHIBITS:**
**----------------------------------------**

**NIL**

**//TRUE COPY//**

**P.S.TO JUDGE**

Msv/

**A.MUHAMED MUSTAQUE, J.**

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W.P.(C) No.15656 of 2015

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Dated this the 23rd day of June, 2015

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

The petitioner impugns Ext.P9 conditional stay order passed by the 1st respondent in a revision filed against the penalty proceedings.

2. As per the condition imposed, the petitioner was directed to remit 30% of the disputed amount of ₹14,62,000/- for the three assessment years 2010-11, 2011-12 & 2012-13.

3. The petitioner's case is that, he was awarded the work to a contractor and that, the contractor has submitted a return and also was imposed with a penalty. It is further submitted that, the contractor also paid the penalty amount and therefore, without considering those facts, the conditional order now passed is too onerous.

4. The penalty proceedings were initiated against the petitioner for the reason that, being the awarder of a contract, the petitioner failed to deduct tax at source. The revisional authority in fact adverted to the petitioner's case regarding the discharge of liability of tax subsequently by the contractor. However, the authority imposed the condition taking note of the fact that, the petitioner being an awarder of the contract, failed to deduct tax at source.

5. In view of the above circumstances, I do not find any infirmity with the order, especially when it is only a conditional order being satisfied with a *prima facie* case. The real issue has to be adverted only at the hearing of final disposal of the revision.

6. It is argued by the learned counsel for the petitioner that, it is too onerous to comply with the condition imposed and it is too disproportionate while considering the facts and circumstances. It is further submitted that, the total amount of the award of contract is only ₹73 lakhs and if the petitioner is mulcted with such a huge liability, he will not be able to run his business.

7. Taking note of the over all facts and circumstances, the conditional order is modified by directing the petitioner to remit an amount of ₹2,00,000/- (Rupees Two lakhs only) within one month from today. The petitioner shall abide by all other conditions in the impugned order.

This writ petition is disposed of as above.

Sd/-
**A.MUHAMED MUSTAQUE, JUDGE.**

AV