IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No. 16109 of 2015 (K)

PETITIONER(S)/PETITIONER:

NAVABHARATH INSULATIONS,
UPPUDAN HOUSE, CHOTTANIKARA P O, KOCHI 682 312
REPRESENTED BY ITS MANAGING PARTNER, SRI N. V. PAILY

BY ADV. SRI.DALE P.KURIEN

RESPONDENT(S)/RESPONDENTS:

1. THE ASST. COMMISSIONER
(WC & LT), O/O.THE DEPUTY COMMISSIONER, COMMERCIAL
TAXES DEPARTMENT, CLASS TOWER, 2ND FLOOR,
OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHI 682018

2. THE COMMISSIONER OF COMMERCIAL TAXES,
VIKAS BHAVAN, OPP MUSEUM , PALAYAM,
THIRUVANANTHAPURAM 695033

3. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO TAXES DEPARTMENT
GOVERNMENT SECRETARIAT, STATUE JUNCTION
THIRUVANANTHAPURAM 695 001

BY GOVERNMENT PLEADER SMT.SHOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1:	**TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 26.6.2008**
EXHIBIT P2:	**TRUE COPY OF THE WORK ORDER DATED 22.5.2012**
EXHIBIT P2(A):	**TRUE COPY OF THE WORK ORDER DATED 23.3.2012**
EXHIBIT P2(B):	**TRUE COPY OF THE WORK ORDER DATED 29.3.2015**
EXHIBIT P2(C):	**TRUE COPY OF THE WORK ORDER DATED 2.5.2012**
EXHIBIT P2(D):	**TRUE COPY OF THE WORK ORDER DATED 5.7.2012**
EXHIBIT P2(E):	**TRUE COPY OF THE WORK ORDER DATED 7.9.2012**
EXHIBIT P2(F):	**TRUE COPY OF THE WORK ORDER DATED 15.11.2012**
EXHIBIT P2(G):	**TRUE COPY OF THE WORK ORDER DATED 13.2.2012**
EXHIBIT P2(H):	**TRUE COPY OF THE WORK ORDER DATED 1.6.2012**
EXHIBIT P2(I):	**TRUE COPY OF THE WORK ORDER DATED 1.6.2012**
EXHIBIT P2(J):	**TRUE COPY OF THE WORK ORDER DATED 16.8.2012**
EXHIBIT P2(K):	**TRUE COPY OF THE WORK ORDER DATED 18.12.2012**
EXHIBIT P2(L):	**TRUE COPY OF THE WORK ORDER DATED 2.11.2012**
EXHIBIT P2(M):	**TRUE COPY OF THE WORK ORDER DATED 31.8.2012**
EXHIBIT P3:	**TRUE COPY OF THE NO LIABILITY CERTIFICATE DATED 20.04.2012**
EXHIBIT P3(A):	**TRUE COPY OF THE NO LIABILITY CERTIFICATE DATED 3.8.2012**
EXHIBIT P3(B):	**TRUE COPY OF THE NO LIABILITY CERTIFICATE DATED 19.2.2013**
EXHIBIT P3(C):	**TRUE COPY OF THE NO LIABILITY CERTIFICATE DATED 19.2.2013**
EXHIBIT P4:	**TRUE COPY OF THE TAX AUDIT REPORT DATED 24.12.2013**

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EXHIBIT P5:	TRUE COPY OF THE TAX RETURN DATED 24.12.2013
EXHIBIT P6:	TRUE COPY OF THE PRE-ASSESSMENT NOTICE DATED 19.6.2014
EXHIBIT P7:	TRUE COPY OF THE ASSESSMENT ORDER DATED 19.1.2015
EXHIBIT P8:	TRUE COPY OF THE RECTIFICATION PETITION UNDER SECTION 66 DATED 3.1.2015
EXHIBIT P9:	TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT REJECTING THE RECTIFICATION PETITION DATED 17.3.2015
EXHIBIT P10:	TRUE COPY OF THE D.B DECISION REPORTED IN 150 ITR 105(KER) CITED CIT VS. PAREKH BROS.
EXHIBIT P11:	TRUE COPY OF THE JUDGMENT IN THE CASE SRI. P. PADMARAJAN, DATED 5.7.2012 IN WPC NO.13493/2012
EXHIBIT P12:	TRUE COPY OF THE JUDGMENT DATED 31.1.2012 IN WPC NO.850/2012
EXHIBIT P13:	A TRUE COPY OF THE AFFIDAVIT FILED BY SHRI. T.S. RAMASWAMY, CHARTERED ACCOUNTANT DATED 26.3.2015

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

A. MUHAMED MUSTAQUE, J.

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W.P. (C). No. 16109 of 2015

Dated this the 1st day of June, 2015

<u>J U D G M E N T</u>

The petitioner impugns Ext.P7 Assessment Order. By P7 assessment order, petitioner has been directed to remit Rs.16,62,549/-.

2. The petitioner apparently filed a petition dated 03.01.2015. The impugned order was passed on 19.01.2015. The petition filed by the petitioner was treated as a rectification petition and it was dismissed by the authority, vide Ext.P9, stating that it was received only on 13.03.2015 and there is no error apparent.

3. Petitioner has also filed an affidavit of the Chartered Accountant before this court to the effect that the entire records were made available before the assessing authority before passing the order, and he was convinced about the filing of form 20B.

4. The main points raised by the petitioner is that the turn over assessed is covered by form 20B. He further submits if the authority had verified the Form 20B, necessarily the petitioner would not have been mulcted with such huge liability. The question is whether the petitioner has produced Form 20B or not is a factual issue. The petitioner also submits that since he has possessed form 20B there is no necessity to withheld it.

5. I am of the view that the petitioner should be given an

opportunity. However, taking note of the certain latches on the part of the petitioner, reconsideration should not be without any condition. In such circumstance, the following directions are issued;

> "Ext.P7 is set aside on condition that the petitioner deposits sum of Rs.2,00,000/- within one month. Thereafter petitioner shall produce form 20B and other records before the 1st respondent. The 1st respondent shall pass appropriate orders, after giving an opportunity to the petitioner, within a period of 2 months.
>
> If it is found that the petitioner is not liable for payment of any amount now demanded, the entire deposit made by him shall be refunded to the petitioner. However, it is found that the petitioner is liable to pay any amount less than the amount demanded, the amount shall be adjusted against any amount payable."

The writ petition stands disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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