IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

WP(C).No. 16793 of 2015 (Y)
----------------------------------------

PETITIONER(S):
----------------------

MOHANAN NAIR.M.,
PROP: MEGHA AGENCIES, KADUVATHODU, CHELIKUZHY,
PATHANAPURAM.

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

RESPONDENT(S):
-------------------------

1. COMMERCIAL TAX OFFICER,
PUNALUR 691 306.

2. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, KOTTARAKKARA 691 506.

3. DEPUTY COMMISSIONER,
COMMERCIAL TAXES, KOLLAM 691 001.

4. COMMISSIONER OF COMMERCIAL TAXES, KARAMANA,
THIRUVANANTHAPURAM 695 001.

5. DEPUTY TAHSILDAR (RR),
TALUK OFFICE, PATHANAPURAM 689 696.

6. DEPUTY COMMSSIONER (APPEALS),
COMMERCIAL TAXES, KOLLAM 691 001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

**WP(C).No. 16793 of 2015 (Y)**
**--------------------------------------**

## APPENDIX

**PETITIONER(S)' EXHIBITS**
**------------------------------------**

**P1-** TRUE COPY OF THE ANNUAL RETURN FOR THE YEAR 2011-12 FILED BY THE PETITIONER

**P2-** TRUE COPES OF THE STATEMENT OF PURCHASE UPLOADED ALONG WITH MONTHLY RETURNS BY THE PETITIONER

**P3-** TRUE COPY OF THE AUDIT REPORTS IN FORM 13 & 13A UPLOADED ON 19.12.2012 BY THE PETITONER

**P4-** TRUE COPY OF THE NOTICE U/S 25(1) DATED 27.6.2014 ISSUED BY THE 1ST RESPONDENT

**P5-** TRUE COPY OF THE ASSESSMENT ORDER DATED 25.10.2014 ISSUED BY THE 1ST RESPONDENT

**P6-** TRUE COPY OF RECTIFICATION PETITON DATED 20.11.2014 FILED BEFORE THE 1ST RESPONDENT

**P7-** TRUE COPY OF REMINDER DATED 9.2.2015 FILED BEFORE THE 1ST RESPONDENT

**P8-** TRUE COPY OF DEMAND NOTICE IN FORM 1 & 10 BEARING NO.2015/116/2/500 DATED 27.4.2015 ISSUED BY THE 5TH RESPONDENT

**P9-** TRUE COPY OF THE PETITON DATED 6.5.2015 ADDRESSED TO THE 1ST RESPONDENT

**P10-** TRUE COPY OF PETITION DATED 13.52015 FILED BEFORE THE 3RD RESPONDENT

**P11-** TRUE COPY OF PETITION DATED 12.5.2015 FILED BEFORE THE 4TH RESPONDENT

**P12-** TRUE COPY OF THE APPEAL FILED BEFORE THE 6TH RESPONDENT ON 12.5.2015

**P12(A)-** TRUE COPY OF THE STAY/URGENT HEARING APPLICATION FILED IN EXT P12 APPEAL ON 12.5.2015 BEFORE THE 6TH RESPONDENT

**P13-** TRUE COPY OF THE STAY ORDER DATED 13.5.2015 IN KVATA (KLM) 359/2015 ISSUED BY THE 5TH RESPONDENT

**RESPONDENT(S)' EXHIBITS**
**--------------------------------------** NIL.

/ TRUE COPY /

PJ P.S. TO JUDGE

**A.MUHAMED MUSTAQUE, J.**

*****************************************************

W.P.(C) No.16793 of 2015

*****************************************************

Dated this the 6th day of July, 2015

**<u>JUDGMENT</u>**

The petitioner, impugning conditional oder in the stay application, has approached this Court.

2. The petitioner's case is that he is entitled for input tax credit for Rs.8,51,086/-. The petitioner's case is that the Assessing Authority have no case that the input tax credit is not admissible. However, overlooking the above contention, the Appellate Authority imposed condition for granting stay to deposit 30% of the demand and to furnish the security for the remaining amount.

3. Learned Government Pleader points out that the petitioner has given sufficient opportunities to the proceedings and he has not produced books of accounts showing the purchase and sale. In the absence of the above, the Assessing Authority declined giving input tax credit.

4. The Appellate Authority while imposing condition need not advert entire case to impose condition. Prima facie,

satisfaction has been arrived in the light of nature of the contention raised. In that view of the matter, I do not find any infirmity in imposing condition.

5. Learned counsel for the petitioner submits that since he will be entitled for refund of the amount and he is only a starter, the condition imposed is too onerous and it cannot be complied with.

Taking note of the facts and circumstances, the condition is modified and the petitioner shall deposit Rs.1,00,000/- within one month. The appeal shall be disposed within a period of four months. The petitioner shall abide by all other conditions.

The writ petition is disposed of as above.

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

ln