IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 21353 of 2015 (T)

PETITIONER(S):

M/S. ZITA AIR CONDITIONING AND REGRIGERATION
COMPANY PVT. LTD, 33/542, EDAPPALLY TOLL,
KOCHI (BRANCH AT 13/754, M.A. COMPLEX, ANNIHALL ROAD,
CALICUT) REPRESENTED BY ITS MANAGING DIRECTOR,
MICHAEL CHE-GUVERA

BY ADVS.SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM

RESPONDENT(S):

1. THE ASST. COMMISSIONER,
(WORKS CONTRACT) DEPARTMENT OF COMMERCIAL TAXES,
CLASS TOWER, KARGIL LANE,
ERNAKUALAM, KOCHI 682 018.

2. THE DEPUTY COMMISSIONER (APPEALS),
DEPT. OF COMMERCIAL TAXES, ERNAKULAM 682015.

3. THE INSPECTING ASST. COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM 682 030.

BY SENIOR GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PJ

WP(C).No. 21353 of 2015 (T)
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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:	**TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR 2009-10 DT. 28/8/10**
EXT.P2:	**TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR 2010-11 DT. 31/8/11**
EXT.P3:	**TRUE COPY OF THE ASSESSMENT ORDER NOL 320720841/09-10 DT. 28/2/15**
EXT.P4:	**TRUE COPY OF THE ASSESSMENT ORDER NOL 320720841/10-11 DT. 28/2/15**
EXT.P5:	**TRUE COPY OF THE APPEAL DT. 24/4/15 FOR THE YEAR 2009-10**
EXT.P6:	**TRUE COPY OF THE APPEAL DT 22/4/FRO THE YEAR 2010-11**
EXT.P7:	**TRUE COPY OF THE DEMAND NOTICE NO. A5-1372/15 DT. 23/5/15**
EXT.P8:	**TRUE COPY OF THE DEMAND NOTICE NP A5-1373/15 DT. 23/5/15**
EXT/.P9:	**TRUE COPY OF THE REQUEST FOR THE YEAR 2009-10 DT. 31/5/15**
EXT.P10:	**TRUE COPY OF THE REWQUEST FOR THE YEAR 2010-11 DT. 31/5/15**
EXT.P11:	**TRUE COPY OF THE STAY ORDER NO. KVATA 1001/15 & 1002/15 DT. 25/6/15**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.21353 of 2015

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Dated this the 20th day of July, 2015

<u>JUDGMENT</u>

The petitioner, impugning conditional order of stay in appeals against the assessment orders, have approached this Court.

2. The assessment is for the years 2009-2010 and 2010-2011. The Appellate Authority imposed condition of 30% of the outstanding demand for both years and furnished security for the remainder.

3. The petitioner's case is that the assessment is flawed for the reason that it was based on an error committed by the Chartered Accountant of the petitioner while uploading the audit report prescribed under Section 42 of the Kerala Value Added Tax Act. It is stated that the service receipts were shown as interstate sales.

4. This Court is of the view that whether it was error or not has to be considered by the Appellate Authority after adverting to the materials placed before them. Therefore, there is no infirmity in

the condition imposed. Taking note of the facts and circumstances, it appears that the condition is too onerous, if ultimately the liability is recalculated. The petitioner admits their liability would around Rs.6 lakhs if the petitioner's claim is accepted.

Considering the facts and circumstances, the conditional order is modified by depositing Rs.10 lakhs and shall abide by all other conditions. The petitioner shall remit the above amount within four weeks.

The writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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