IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 22077 of 2015 (H)
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PETITIONER :
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M/S. ST. ANTONY'S CARS (P) LTD.
XII/268, MUNDAKKAL, S.N COLLEGE JUNCTION,
KOLLAM -691 001,
REPRESENTED BY ITS MANAGING DIRECTOR,
SRI.HAIMER REYNOLD.

BY ADV. SRI.TOMSON T.EMMANUEL
SRI.JENSON FRANCIS PAYANKAN

RESPONDENT(S):
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1. ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, SPECIAL CIRCLE,
   KOLLAM -691 002.

2. DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAX COMPLEX, ASRAMAM,
   KOLLAM -691 002.

3. THE TAHSILDAR,
   TALUK OFFICE, CIVIL STATION, KOLLAM- 691 001.

BY GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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**WP(C).No. 22077 of 2015 (H)**
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**
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**EXHIBIT P1.** COPY OF THE ASSESSMENT ORDER DATED 25.10.13 ISSUED TO THE PETITIONER BY IST RESPONDENT, FOR 2012-13 UNDER THE KVAT ACT, BY SCRUTINY WITH KVATIS, WITHOUT VERIFYING BOOKS OF ACCOUNTS OF PETITIONER.

**EXHIBIT P1(A).** COPY OF THE ORDER PASSED U/S.66 OF KVAT ACT AGAINST AN APPLICATION FILED ON THE PRESUMPTION THAT PETITIONER ALREADY INVOKED APPEAL AGAINST EXHIBIT P1 ORDER.

**EXHIBIT P2.** COPY OF THE APPEAL DATED 19.3.15 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXHIBIT P1 AND P1(A) ORDERS FOR 2012-13.

**EXHIBIT P2(A).** COPY OF THE STAY PETITION DATED 19.3.15 SUBMITTED BY THE PETITIONER ALONG WITH EXHIBIT P2 APPEAL, BEFORE THE 2ND RESPONDENT.

**EXHIBIT P3.** COPY OF THE CIRCULAR NO.C1-45370/09/CT DATED 16.11.09 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES, PRODUCED ALONG WITH EXT P2(A) STAY PETITION, BEFORE 2ND RESPONDENT.

**EXHIBIT P4.** COPY OF THE REVENUE RECOVERY NOTICE IN FORM NO.1 DATED 13.1.14 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT, PURSUANT TO THE DEMAND IN EXT P1.

**EXHIBIT P4(A).** COPY OF THE REVENUE RECOVERY NOTICE IN FORM NO.10 DATED 13.1.14 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT, PURSUANT TO THE DEMAND IN EXT. P1.

**EXHIBIT P5.** COPY OF THE COPY OF JUDGMENT DATED 23.3.15 IN WPC.NO.9246/15 PASSED BY THIS HON'BLE COURT, DIRECTING TO DISPOSE EXT. P2(A) STAY PETITION WITHIN 2 MONTHS.

**EXHIBIT P6.** COPY OF THE MECHANICAL CONDITIONAL STAY ORDER DATED 16.6.15 COMMUNICATED TO PETITIONER ON 19.6.15 BY 2ND RESPONDENT DIRECTING TO SATISFY 1/4TH OF DISPUTED TAX AND INTEREST.

**EXHIBIT P7.** COPY OF THE REPORTED DECISION OF THIS HON'BLE COURT IN ARCHANA AGENCIES VS. COMMERCIAL TAX OFFICER (2014) 2 KLT 715.

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

sts P.A.TO JUDGE

**A.MUHAMED MUSTAQUE, J.**

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W.P.(C) No.22077 of 2015

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Dated this the 22nd day of July, 2015

## JUDGMENT

The petitioner, impugning conditional order in the application for stay passed by the Appellate Authority, have approached this Court.

2. The main grievance of the petitioner is that the Appellate Authority failed to advert input tax credit claimed by the petitioner to the tune of Rs.55 lakhs. The total tax liability is now around Rs.80 lakhs. Therefore, the petitioner submits that the condition imposed is too onerous.

3. Whether the petitioner is entitled for input tax credit or not is the matter to be decided in the appeal. Taking note of the facts and circumstances, this writ petition is disposed of with the following directions:

i. The conditional order is modified as payment of Rs.10 lakhs in two equal monthly instalments.

ii. The first instalment shall be paid on or before 10.8.2015 and the second instalment shall be paid on or before 10.9.2015.

iii. The petitioner shall abide by all other conditions.

iv. The revenue recovery proceedings initiated against the petitioner shall be deferred in tune with the above directions.

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

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