IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 23947 of 2015 (P)

PETITIONER :

PRISTINE ISLE RESORTS
KOVILAKOM, KODAMTHURUTHU, KUTHIATHODE
ALAPPUZHA DISTRICT
REPRESENTED BY ITS AUTHORISED SIGNATORY ABDUL AZEES
(DIRECTOR, SALES & OPERATIONS).

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR
SRI.K.UMAMAHESWAR

RESPONDENT(S) :

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1. THE COMMERCIAL TAX OFFICER (LUXURY TAX)
MELUVALLIL BUILDINGS, KALLUPALAM, ALAPPUZHA
PIN - 688 104.

2. THE INTELLIGENCE OFFICER
SQUAD NO.III, COMMERCIAL TAXES, MELUVALLIL BUILDINGS
KALLUPALAM, ALAPPUZHA, PIN -688 104.

3. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, ASRAMOM, KOLLAM - 691 002.

R1 TO R3 BY SR. GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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...2/-

WP(C).No. 23947 of 2015 (P)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P-1:	**COPY OF PENALTY ORDER DATED 31.3.2014 ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2011-2012.**
EXT.P1(a):	**COPY OF PENALTY ORDER DATED 31.3.2014 ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2012-2013.**
EXT.P1(b):	**COPY OF PENALTY ORDER DATED 31.3.2014 ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2013-2014.**
EXT.P2:	**COPY OF ASSESSMENT ORDER DATED 2.6.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2005-06.**
EXT.P2(a):	**COPY OF ASSESSMENT ORDER DATED 2.6.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2007-08.**
EXT.P2(b):	**COPY OF ASSESSMENT ORDER DATED 30.3.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2008-09.**
EXT.P2(c):	**COPY OF ASSESSMENT ORDER DATED 30.3.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2009-10.**
EXT.P2(d):	**COPY OF ASSESSMENT ORDER DATED 1.12.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2011-2012.**
EXT.P2(e):	**COPY OF ASSESSMENT ORDER DATED 1.12.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2012-2013.**
EXT.P2(f):	**COPY OF ASSESSMENT ORDER DATED 1.12.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2013-2014.**
EXT.P2(g):	**COPY OF ASSESSMENT ORDER DATED 8.12.2014 ISSUED BY THE IST RESPONDENT FOR THE YEAR 2014-2015.**
EXT.P3:	**COPY OF APPEAL MEMORANDUM AGAINST EXT.P1.**
EXT.P3(a):	**COPY OF APPEAL MEMORANDUM AGAINST EXT.P1(a).**
EXT.P3(b):	**COPY OF APPEAL MEMORANDUM AGAINST EXT.P1(b).**
EXT.P3(c):	**COPY OF APPEAL MEMORANDUM AGAINST EXT.P2.**
EXT.P3(d):	**COPY OF APPEAL MEMORANDUM AGAINST EXT.P2(a).**
EXT.P3(e):	**COPY OF APPEAL MEMORANDUM AGAINST EXT.P2(b).**

(Contd...)

EXT.P3(f): COPY OF APPEAL MEMORANDUM AGAINST EXT.P2(c).

EXT.P3(g): COPY OF APPEAL MEMORANDUM AGAINST EXT.P2(d).

EXT.P3(h): COPY OF APPEAL MEMORANDUM AGAINST EXT.P2(e).

EXT.P3(i): COPY OF APPEAL MEMORANDUM AGAINST EXT.P2(f).

EXT.P3(j): COPY OF APPEAL MEMORANDUM AGAINST EXT.P2(g).

EXT.P4: COPY OF STAY PETITION FILED IN EXT.P3 APPEAL.

EXT.P4(a): COPY OF STAY PETITION FILED IN EXT.P3(a) APPEAL.

EXT.P4(b): COPY OF STAY PETITION FILED IN EXT.P3(b) APPEAL.

EXT.P4(c): COPY OF STAY PETITION FILED IN EXT.P3(c) APPEAL.

EXT.P4(d): COPY OF STAY PETITION FILED IN EXT.P3(d) APPEAL.

EXT.P4(e): COPY OF STAY PETITION FILED IN EXT.P3(e) APPEAL.

EXT.P4(f): COPY OF STAY PETITION FILED IN EXT.P3(f) APPEAL.

EXT.P4(g): COPY OF STAY PETITION FILED IN EXT.P3(g) APPEAL.

EXT.P4(h): COPY OF STAY PETITION FILED IN EXT.P3(h) APPEAL.

EXT.P4(i): COPY OF STAY PETITION FILED IN EXT.P3(i) APPEAL.

EXT.P4(j): COPY OF STAY PETITION FILED IN EXT.P3(j) APPEAL.

EXT.P5: COPY OF ORDER DATED 23.6.2015 ISSUED BY THE 3RD RESPONDENT IN RESPECT OF 2011-12, 2012-13 & 2013-14.

EXT.P5(a): COPY OF ORDER DATED 23.6.2015 ISSUED BY THE 3RD RESPONDENT IN RESPECT OF 2005-06, 07-08, 09-10 & 2011-12.

EXT.P5(b): COPY OF ORDER DATED 23.6.2015 ISSUED BY THE 3RD RESPONDENT IN RESPECT OF 2011-12, 2012-13 & 2013-14.

EXT.P5(c): COPY OF ORDER DATED 23.6.2015 ISSUED BY THE 3RD RESPONDENT IN RESPECT OF 2014-15 (APRIL TO OCTOBER).

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A. MUHAMED MUSTAQUE, J

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W.P.(C).No. 23947 of 2015

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Dated this the 13th day of August, 2015

JUDGMENT

The petitioner has approached this Court impugning conditional order of stay in an appeal under the Kerala Tax on Luxuries Act, 1976.

2. The petitioner preferred appeals against penalty orders as well as assessment orders. The total demand in both is around Rs.1,80,00,000/-.

3. The petitioner has been directed to pay 30% to 40% demand in penalty orders as well as in the assessment orders.

4. The petitioner's case is that the imposition of the condition is too onerous. It is also contended that the penalty is based on the estimation and therefore, it is unsustainable. It is also argued the learned counsel for the petitioner is that without adverting the petitioner's contention in the appeal, conditions have been imposed in the impugned order.

5. I do not find any infirmity with the order. It is in fact is supported with reasons.

6. However, taking note of the nature of contentions and issues involved, this Court is of the view that the conditional

order has to be modified as a payment of Rs.35 lakhs. The petitioner shall remit the above amount in three instalments. The first of the instalments shall be paid on or before 05.09.2015 and followed by 05.10.2015 and 05.11.2015. If the petitioner complies with the above directions, revenue recovery shall be deferred till the disposal of the appeals. If the petitioner fails to remit any of the conditions, the respondents are free to proceed against the petitioner.

The writ petition is disposed of as above. No costs.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE

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