IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 25541 of 2015 (P)

PETITIONER :

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

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

RESPONDENT(S):
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1. THE ASST. COMMISSIONER (WOKS CONTRACT),
   DEPT OF COMMERCIAL TAXES, CLAS TOWER,
   KARGIL LANE, ERNAKULAM, KOCHI-682 018.

2. THE DEPUTY COMMISSIONER (APPEALS),
   DEPT. OF COMMERCIAL TAXES,
   ERNAKULAM-682 015.

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

BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 25541 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR 2011-12 DTD. 31.8.2012.

P2 : COPY OF THE ASSESSMENT ORDER NO.32072084122/2011-12 DTD. 25.3.2015.

P3 : COPY OF THE APPEAL DTD. 4.6.2015 FOR THE YEAR 2011-12.

P4 : COPY OF THE DEMAND NOTICE NO.A5-1899/2015 DTD. 27.7.2015.

P5 : COPY OF THE REQUEST FOR THE YEAR 2011-12 DTD. 31.5.2015.

P6 : COPY OF THE STAY ORDER NO.KVATA 1257/2015 DTD. 5.8.2015.

P7 : COPY OF THE JUDGMENT DTD. 20.7.2015 IN WPC NO.21353 OF 2015.

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.25541 of 2015

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Dated this the 20th day of August, 2015

JUDGMENT

The petitioner, impugning conditional order in a stay application filed in an appeal, have approached this Court. The petitioner's case is that the condition imposed is too onerous and without adverting to their contention in the appeal. It is pointed out that the Chartered Accountant committed a mistake in uploading the audit report under Section 42 of the Kerala Value Added Tax Act by showing the labour charge receipts as interstate sales. Therefore, that liability is excluded. The petitioner’s liability is less than Rs.3 lakhs. It is further submitted that by the impugned order, the petitioner would have to pay around Rs.15 lakhs.

The question whether there is an error or not cannot be decided at this stage and it is a matter to be decided in the appeal. However, taking note of the nature of the issue is involved, this Court is of the view that the conditional order has to be modified as payment of Rs.7.5 lakhs in two equal monthly instalments. The first instalment shall be paid on or before 5.9.2015 and the second instalment shall be paid on or before 5.10.2015. The petitioner shall abide by all other conditions.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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