IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).NO. 27947 OF 2015 (P)

PETITIONER:

ASHOK KUMAR, PROP: CREATIVE TRADING COMPANY,
AMBADIYIL HOUSE, ADINAD SOUTH, KATTILKADAVU P.O.
KARUNAGAPPALLY.

BY ADVS.SRI.K.N. SREEKUMARAN
SRI.P.D. UNNIKANNAN NAIR
SMT.V.P. SEENA DEVI

RESPONDENTS:

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1. COMMERCIAL TAX OFFICER (WORKS CONTRACT),
KOLLAM-691 001.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOLLAM-691 001.

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

4. TAHSILDAR, TALUK OFFICE,
KARUNAGAPPALLY-691 004.

BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AS

WP(C).NO. 27947 OF 2015 (P)

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1:	**COPY OF THE ASSESSMENT ORDER NO.32021697868/2011-12 DATED 30.3.2015 ISSUED BY THE 1ST RESPONDENT.**
EXT.P2:	**COPY OF THE ASSESSMENT ORDER NO.32021697868/2012-13 DATED 30.3.2015 ISSUED BY THE 1ST RESPONDENT.**
EXT.P3:	**COPY OF THE PENALTY ORDER NO.32021697868/2011-12 DATED 30.3.2015 ISSUED BY THE 1ST RESPONDENT.**
EXT.P4:	**COPY OF THE PENALTY ORDER NO.32021697868/2012-13 DATED 30.3.2015 ISSUED BY THE 1ST RESPONDENT.**
EXT.P5:	**COPY OF THE EXTRACTS OF THE PURCHASE REGISTER AND LEDGER ACCOUNT FOR 2011-12 & 2012-13 KEPT BY THE PETITIONER.**
EXT.P6:	**COPY OF THE APPEAL & APPLICATIONS FOR STAY AND EARLY HEARING FILED AGAINST EXT.P1 BEFORE THE 2ND RESPONDENT 6.5.2015.**
EXT.P7:	**COPY OF THE APPEAL & APPLICATIONS FOR STAY AND EARLY HEARING FILED AGAINST EXT.P2 BEFORE THE 2ND RESPONDENT 6.5.2015.**
EXT.P8:	**COPY OF THE REVISION & APPLICATIONS FOR STAY AND EARLY HEARING FILED AGAINST EXT.P3 PENALTY BEFORE THE 2ND RESPONDENT 6.5.2015.**
EXT.P9:	**COPY OF THE REVISION & APPLICATIONS FOR STAY AND EARLY HEARING FILED AGAINST EXT.P4 PENALTY BEFORE THE 2ND RESPONDENT 6.5.2015.**
EXT.P10:	**COPY OF THE ORDER NO.KVATA (KLM) 352/15 & 353/2015 DATED 16.7.2015 ISSUED BY THE 2ND RESPONDENT.**
EXT.P11:	**COPY OF THE ORDER NO.137/15 & 138/15 DATED 12.8.2015 ISSUED BY THE 3RD RESPONDENT.**
EXT.P12:	**COPY OF THE DEMAND NOTICE IN FORM 1 BEARING NO.B2-15449/15 DATED 19.8.2015 ISSUED BY THE 4TH RESPONDENT.**
EXT.P13:	**COPY OF THE DEMAND NOTICE IN FORM 1 BEARING NO.B2-15440/15 DATED 19.8.2015 ISSUED BY THE 4TH RESPONDENT.**

RESPONDENT'S EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AS

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No.27947 of 2015

Dated this the 16th day of September, 2015

JUDGMENT

The challenge in this writ petition is against Exts.P10 and P11 conditional orders of stay passed by the 2nd and 3rd respondents, the appellate authority and revision authority respectively, in an appeal and revision filed by the petitioner against orders of assessment and penalty under the KVAT Act. The contention of the petitioner in the writ petition is essentially that while passing Exts.P10 and P11 orders, the 2nd and 3rd respondents did not exercise their discretion validly.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that in both Exts.P10 and P11 orders, the 2nd and 3rd respondents have considered the material produced by the petitioner and given reasons for the conditions that were imposed in the said orders requiring the petitioner to pay a portion of the tax/penalty amount confirmed against him as a condition for the grant of stay against recovery of the balance amount pending disposal of the appeal/revision. In Ext.P10 order, the 2nd respondent finds that the petitioner did not produce

any supporting evidence to rebut the findings in the assessment order and he was therefore not in a position to come to any conclusive finding with regard to the contentions advanced against the said proceedings. In Ext.P11 order, the 3rd respondent revision authority considers the contention of the petitioner on merits and finds that the contention of the petitioner were not sufficient to grant a complete unconditional stay as prayed for. It was therefore that the order was made conditional on the petitioner paying 50% of the disputed amount pending disposal of the revision petition. I find that Exts.P10 and P11 orders contained reasons for the decisions arrived at by the authorities therein and hence there is no scope for interfering with the said orders in the proceedings under Article 226 of the Constitution of India. Counsel for the petitioner would submit that the petitioner would require one month’s time to comply with the directions in Exts.P10 and P11 orders. Taking note of the said plea of financial hardship urged on behalf of the petitioner, I grant the petitioner time up to 15/10/2015 for complying with the directions in Exts.P10 and P11 orders of the 2nd and 3rd respondents. Save for this limited modification of Exts.P10 and P11 orders, with regard to the time for complying with the directions contained therein, the writ petition in its challenge against Exts.P10 and P11 orders is otherwise dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

rsr