**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937**

**WP(C).No. 32026 of 2015 (C)**
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**PETITIONER(S):**
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**SRI.SAINUL ABID,**
**M/S.MEMANA AGENCIES, KUTTILANGADI, PERINTHALMANNA,**
**MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.N.DAMODARAN NAMBOODIRI**
**SRI.P.UNNIKRISHNAN (THRISSUR)**

**RESPONDENT(S):**
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1. **THE COMMERCIAL TAX OFFICER,**
   **DEPARTMENT OF COMMERCIAL TAXES, PERINTHALMANNA - 679 322.**

2. **THE DEPUTY COMMISSIONER,**
   **DEPARTMENT OF COMMERCIAL TAXES, MALAPPURAM - 676 505.**

3. **THE INSPECTING ASSISTANT COMMISSIONER,**
   **DEPARTMENT OF COMMERCIAL TAXES,**
   **MALAPPURAM AT MANJERI - 676 121.**

**BY GOVERNMENT PLEADER SMT.LILLY K.T.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

**WP(C).No. 32026 of 2015 (C)**
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**
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**P1:TRUE COPY OF THE PENALTY ORDER NO.32100733304/2011-12 DATED 31.01.2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**

**P2:TRUE COPY OF THE REVISION PETITION DATED 03.03.2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

**P3:TRUE COPY OF THE REVENUE RECOVERY NOTICE NO.ML3 930/2015 DATED 23.04.2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.**

**P4:TRUE COPY OF THE STAY ORDER NO. IA.NO.7/2015 IN KVAT RP.NO.119/2015/2014 DATED 23.09.2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER**

**RESPONDENT(S)' EXHIBITS:**
**-----------------------------------------**

**NIL**

**//TRUE COPY//**

**P.S.TO JUDGE**

Msv/

**A.K.JAYASANKARAN NAMBIAR, J.**
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**W.P.(C). No. 32026 of 2015**
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**Dated this the 20th day of October, 2015**

## JUDGMENT

The challenge in the writ petition is against Ext.P4 conditional order of stay passed by the 2nd respondent in a revision filed by the petitioner against an order of penalty for the assessment year 2011-12 under the Kerala Value Added Tax Act, 2003, hereinafter referred to as the "KVAT Act". In the writ petition, the contention of the petitioner is that, while passing Ext.P4 order, the 2nd respondent did not exercise its 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 Ext.P4 order, the 2nd respondent has considered the various contentions raised by the petitioner and perused the records in the matter and found that the opening stock figure carried over differs from the corresponding closing stock figure of previous year and it was under those circumstances that the 2nd respondent found that the

petitioner had only made out a prima facie case for conditional stay. The 2nd respondent therefore, proceeded to grant the stay on condition that the petitioner paid an amount of Rs.50,000/- as against the demand of Rs.1,13,208/-, that was imposed on the petitioner by way of penalty. I see no reason to interfere with Ext.P4 order, save to the extent of reducing the pre-deposit ordered from Rs.50,000/- to Rs.40,000/-. Save for this limited modification of Ext.P4 order, the writ petition in its challenge against Ext.P4 is otherwise, dismissed.

The learned counsel for the petitioner seeks some time for making the payment referred to above. Taking note of the plea of financial hardship urged on behalf of the petitioner, I direct that if the petitioner pays the amount of Rs. 40,000/-, and complies with the other conditions in Ext.P4 order within one month from today, then the same shall be treated as compliance with Ext.P4 order.

Sd/-
**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

das /21.10.15