IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 33433 of 2015 (D)

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PETITIONER(S):

VENUS HOME APPLIANCES PVT.LTD.,
DOOR NO 39/5455, KURISUPALLY ROAD, PERUMANOOR POST,
KOCHI 682 015, ERNAKULAM DISTRICT, REPRESENTED BY
MR. RAGHUNATH- MANAGER & AUTHORISED SIGNATORY.

BY ADVS.SRI.JOSEPH JERARD SAMSON RODRIGUES
SRI.ROVIN RODRIGUES

RESPONDENT(S):

1. THE COMMERCIAL TAX OFFICER,
KVAT IV CIRCLE, COMMERCIAL TAXES, ERNAKULAM,
KOCHI 682 018.

2. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, THEVARA, ERNAKULAM,
KOCHI 682 015.

BY GOVERNMENT PLEADER SRI.R.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

**WP(C).No. 33433 of 2015 (D)**
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**
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| **EXHIBIT P1** | **TRUE PHOTOCOPY OF THE ASSESSMENT ORDER DATED 29-04-2015 ISSUED BY THE FIRST RESPONDENT FOR THE YEAR 2012-2013** |
| **EXHIBIT P2** | **TRUE PHOTOCOPY OF THE PENALTY ORDER DATED 14-07-2015 ISSUED BY THE FIRST RESPONDENT FOR THE YEAR 2012-2013** |
| **EXHIBIT P3** | **TRUE PHOTOCOPY OF THE REVISION MEMORANDUM DATED 17-08-2015 FILED BEFORE THE SECOND RESPONDENT** |
| **EXHIBIT P4** | **TRUE PHOTOCOPY OF THE STAY PETITION IN REVISION DATED 17-08-2015 FILED BEFORE THE SECOND RESPONDENT** |
| **EXHIBIT P5** | **TRUE PHOTOCOPY OF THE STAY ORDER DATED 17-10-2015 ISSUED BY THE SECOND RESPONDENT** |

**RESPONDENT(S)' EXHIBITS**
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**NIL.**

**/ TRUE COPY /**

**P.S. TO JUDGE**

**PJ**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C) No. 33433 of 2015**

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Dated this the 3rd day of November 2015

**JUDGMENT**

The challenge in the writ petition is, against Ext.P5 conditional order of stay, passed by the 2nd respondent, in a stay petition filed along with the revision petition, challenging an order of penalty imposed on the petitioner for the assessment year 2012-13. The grievance of the petitioner against Ext.P5 order is that, while passing the said order, the 2nd respondent revisional authority did not exercise its discretion validly.

2. I have heard Sri.J.J.Samson Rodrigues, learned counsel for the petitioner and also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and on a perusal of Ext.P5 order, I find that, although the specific case of the petitioner was that the stock transfer value reported in the return was correct, and not irregular as pointed out by the assessing authority in the order imposing penalty, the 2nd respondent

specifically finds that the petitioner did not produce any books of accounts and other documents before, either the assessing authority or him for the purposes of establishing the said contention. It is under the said circumstances, that the 2nd respondent found that a decision in the matter could not be taken without perusing the entire assessment records and other documents necessary to look into the sustainability or otherwise of the contentions of the petitioner. I am of the view that Ext.P5 order passed by the 2nd respondent does not call for any interference in these proceedings under Article 226 of the Constitution of India. Accordingly the writ petition in its challenge against Ext.P5 order is dismissed.

4. Counsel for the petitioner would submit that the petitioner is currently going through a financial crunch and therefore he would require some time to remit the payment of 30%, as directed in Ext.P5 order. Taking note of the said submission of counsel for the petitioner as regards the financial hardship faced by the petitioner, I direct that if the petitioner complies with the directions in Ext.P5 order within six weeks from the date of receipt of a copy of this judgment, then the same shall be treated as in compliance with directions in the Ext.P5 order and the 2nd respondent shall proceed to dispose the revision petition itself after hearing the petitioner.

I further make it clear that in compliance with Ext.P5 order of the 2nd respondent, as modified by this judgment, the petitioner shall be required to remit only 30% of the amount confirmed against the petitioner by the penalty order passed against him and for the balance amount, the petitioner need furnish only a simple bond without sureties, since he is a registered dealer under the KVAT Act.

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

sm/