IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 34383 of 2015 (W)

PETITIONER:

M/S.ELITE FOODS (P) LTD., 60,
MAJOR INDUSTRIAL ESTATE,
KALAMASSERY DEVELOPMENT PLOT,
ERNAKULAM - 683 109, REPRESENTED BY
C.G.PRATHIBASMIDAN, CHIEF EXECUTIVE OFFICER.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S):

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1. THE ASST.COMMISSIONER,
   COMMERCIAL TAXES SPECIAL CIRCLE-II,
   ERNAKULAM - 682 015.

2. DEPUTY COMMISSIONER (APPEALS)-II,
   DEPARTMENT OF COMMERCIAL TAXES,
   ERNAKULAM - 682 015.

BY GOVERNMENT PLEADER SRI.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 34383 of 2015 (W)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : **COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 4.1.2010.**

EXT. P2 : **COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DATED 6.4.2015.**

EXT. P3 : **COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 26.6.2015.**

EXT. P4 : **COPY OF ORDER PASSED BY THE 1ST RESPONDENT DATED 30.6.2015.**

EXT. P5 : **COPY OF APPEAL FLED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 20.7.2015.**

EXT. P6 : **COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 24.7.2015.**

EXT. P7 : **COPY OF JUDGMENT IN WP(C)NO.24463/2015 OF THIS HON'BLE COURT DATED 3.9.2015.**

EXT. P8 : **COPY OF ORDER IN KVATA NO.1550/15 ISSUED BY THE 2ND RESPONDENT DATED 7.10.2015.**

EXT. P9 : **COPY OF LETTER ISSUED BY THE TRADE MARK REGISTRY, CHENNAI TO THE PETITIONER DATED 17.7.2012.**

EXT. P10 : **COPY OF JUDGMENT IN WP(C)NO.12039/2014 OF THIS HON'BLE COURT DATED 9.5.2014.**

EXT. P10(A) : **COPY OF JUDGMENT IN WP(C)NO.18777/2014 OF THIS HON'BLE COURT DATED 24.7.2014.**

EXT. P11 : **COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 29.11.2014.**

EXT. P11(A) : **COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 29.8.2014.**

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 34383 of 2015
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Dated this the 16th day of November, 2015

JUDGMENT

The petitioner, is aggrieved by Ext.P8 conditional order of stay, that was passed by the 2nd respondent, in an appeal preferred by the petitioner against an order of assessment under the Kerala Value Added Tax Act, hereinafter referred to as the “KVAT Act”, for the assessment year 2012-2013. In the writ petition, the grievance of the petitioner is that while passing Ext.P8 conditional order of stay, the 2nd respondent did not exercise his discretion validly. It is pointed out that, on an earlier occasion, the 2nd respondent had passed an order of stay, which did not contain any reasons, and the said order was set aside by this Court by Ext.P7 judgment. It is pursuant to the directions in Ext.P7 judgment that Ext.P8 order has now been passed by the 2nd respondent, in which the only reason cited for directing the deposit of 30% of the amount confirmed against the petitioner by the assessment order, as a condition for grant of stay of recovery of the balance amount confirmed against the petitioner, is the finding that the petitioner was using the brand name, which has been registered in favour of a sister unit of the petitioner. Counsel for the petitioner would submit that the said finding runs counter to a judgment of this Court in Kilban Foods v. Commissioner of Commercial Taxes **[2014 (22) KTR 307]** and hence, cannot be legally sustained.

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 the reasons cited by the 2nd respondent for passing a conditional order of stay is one that runs counter to the decision of this Court in the case of Kilban Foods (cited supra). Under the said circumstances, I am of the view that the 2nd respondent should proceed to hear the appeal preferred by the petitioner on merits, after hearing the petitioner. I, therefore, quash Ext.P8 order and direct the 2nd respondent to pass final orders in Ext.P5 appeal, preferred by the petitioner, within a period of two months, after hearing the petitioner. Recovery steps for recovery of amounts confirmed against the petitioner by Ext.P4 assessment order, shall be kept in

abeyance till such time as orders are passed by the 2nd respondent, as directed and communicated to the petitioner.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /16.11.15