IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 35482 of 2015 (I)

PETITIONER:

ARATHY RUBBER PRODUCTS,
KARIMKUNNAM, THODUPUZHA,
REPRESENTED BY ITS MANAGING PARTNER
ZACHARIA STEPHEN

BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA

RESPONDENTS:
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1. COMMERCIAL TAX OFFICER,
   2ND CIRCLE, THODUPUZHA 685 584.

2. INSPECTING ASSISTANT COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   IDUKKI AT KATTAPPANA PIN 685 508.

3. THE COMMISSIONER, OFFICE OF THE
   COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWERS, 8TH FLOOR, KARAMANA,
   THIRUVANANTHAPURAM 695 002

4. STATE OF KERALA REPRESENTED BY
   SECRETARY (TAXES B DEPARTMENT),
   SECRETARIAT, THIRUVANANTHAPURAM 695 001.

ADDL.5. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOTTAYAM 686 001

IS IMPLEADED AS ADDITIONAL R5 AS PER ORDER IN IA NO. 17313/2015 DATED 03.12.2015.

BY GOVERNMENT PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 35482 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	TRUE COPY OF THE SRO 804/2008 PROMULGATED BY THE STATE GOVERNMENT UNDER SECTION 8(5) OF THE CENTRAL SALES TAX ACT DTED 31-07-2008
EXHIBIT P2	TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 8-10-2015
EXHIBIT P3	TRUE COPY OF THE ASSESSMENT ORDER FOR THE AY-2010-2011 (CST) DATED 9-10-2015
EXHIBIT P3(a)	TRUE COPY OF THE ASSESSMENT ORDER FOR THE AY-2011-2012(CST) DATED 9-10-2015
EXHIBIT P4	TRUE COPY OF THE NOTIFICATION IN SRO 753/2011 DATED 30-11-2011 DATED 30-11-2011
EXHIBIT P5	TRUE COPY OF THE CIRCULAR NO 17/2013 DATED 5-10-2013
EXHIBIT P6	TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT [AY - 2010-2011 (CST)]
EXHIBIT P6(a)	TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT [AY - 2010-2011 (CST)]
EXHIBIT P7	TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT [AY - 2011-2012 (CST)]
EXHIBIT P7(a)	TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT [AY - 2011-2012 (CST)]

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE.

ncd

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.35482 of 2015

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Dated this the 3rd day of December, 2015

<u>J U D G M E N T</u>

Against Exts.P3 and P3(a) assessment orders under the Central Sales Tax Act, the petitioner has preferred Exts.P6 and P7 appeals and Exts.P6(a) and P7(a) stay petitions before the additional 5th respondent. It is the case of the petitioner that even prior to considering the stay petition, recovery steps are sought to be pursued for recovery of the amounts confirmed by Exts.P3 and P3(a) assessment orders.

2. I have heard the 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, I dispose the writ petition with the following directions:

> i. The additional 5th respondent shall consider and pass orders on Exts.P6 and P7 appeals within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.
>
> ii. Recovery steps for recovery of amounts confirmed against petitioner by Exts.P3 and P3

(a) assessment orders shall be kept in abeyance till such time as orders are passed by the additional 5th respondent as directed above and communicated to the petitioner.

iii. The order to be passed by the additional 5th respondent shall be a reasoned one adverting to the contentions of the petitioner regarding existence of a prima facie case for a stay of recovery pending disposal of the appeal.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/3.12.15