IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 37451 of 2015 (F)

PETITIONER(S) :

RANGE ENTERPRISES,
T.C.11/1616(1), "SHARON", PLAMOODU CHARACHIRA ROAD,
THIRUVANANTHAPURAM - 695 003.
REPRESENTED BY ITS PROPRIETOR JOSEPH.R.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENT(S) :
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1. INTELLIGENCE OFFICER,
SQUAD NO.III, COMMERCIAL TAXES, THIRUVANANTHAPURAM AT NEYYATTINKARA. PIN - 695 001.

2. COMMERCIAL TAX OFFICER, FIRST CIRCLE, TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM - 695 002.

3. DEPUTY COMMISSIONER, COMMERCIAL TAXES,
TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM - 695 002.

BY SRI.R.RANJITH, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Contd....2/-

AMV

WP(C).No. 37451 of 2015 (F)

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P1.	COPY OF HIGH SEA SALE AGREEMENT DTD 26.09.2013.
EXT.P2.	COPY OF INVOICE ISSUED BY THE FOREIGN SELLER IN RELATION TO EXT.P1 AGREEMENT.
EXT.P3.	COPY OF AIR WAY BILL DATED 26.09.2013.
EXT.P4.	COPY OF BILL OF ENTRY DATED 09.10.2013 IN RELATION TO THE GOODS COVERED BY EXT.P1 TO EXT.P3.
EXT.P5	COPY OF SIR DATED 30.01.2014.
EXT.P6	COPY OF NOTICE DATED 08.07.2014 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2012 - 2013.
EXT.P6A	COPY OF NOTICE DATED 08.07.2014 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2013 - 2014.
EXT.P7	COPY OF LETTER DATED 04.08.2014 ADDRESSED TO THE 1ST RESPONDENT.
EXT.P8	COPY OF REPLY DATED 14.08.2014 FILED BY THE PETITIONER AGAINST EXT.P6.
EXT.P8A	COPY OF REPLY DATED 14.08.2014 FILED BY THE PETITIONER AGAINST EXT.P6A.
EXT.P9	COPY OF PENALTY ORDER DATED 30.09.2014 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2012 - 2013.

Contd...3/-

AMV

EXT.P9A	COPY OF PENALTY ORDER DATED 30.09.2014 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2013 - 2014.
EXT.P10	COPY OF JUDGMENT DATED 16.06.2014 OF THIS HON'BLE COURT IN W.P.(C) NO.11696/2013.
EXT.P11	COPY OF JUDGMENT DATED 10.03.2015 IN W.P.(C) NO.33774/2014
EXT.P12	COPY OF REVISION PETITION AGAINST EXT.P9.
EXT.P12A	COPY OF REVISION PETITION AGAINST EXT.P9A
EXT.P13	COPY OF STAY PETITION FILED IN EXT.P12.
EXT.P13A	COPY OF STAY PETITION FILED IN EXT.P12A
EXT.P14	COPY OF STAY ORDER DATED 05.11.2015 ISSUED BY THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 37451 of 2015

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Dated this the 10th day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P14 conditional order of stay passed by the 3rd respondent in a revision petition filed by the petitioner against the orders imposing penalty on the petitioner under the Kerala Value Added Tax Act. The grievance of the petitioner against Ext.P14 order is essentially that, while passing the said order, the 3rd 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 as also the submissions made across the bar, I find that in Ext.P14 order, the 3rd respondent considered the arguments raised by the learned counsel for the petitioner and found that the claim of the learned counsel that the entire sales effected by the petitioner were to VSSC was found to be incorrect and sales had been effected to other entities. It was also opined that inasmuch as the petitioner had not accounted freight charges received by them

in the returns filed, and the same were accounted only subsequently, there was a possibility that the sales in question were local sales after import. It was, thereafter that the 3rd respondent found that the issue as to whether the petitioner would nevertheless be entitled to exemption would have to be considered based on the materials produced at the time of final hearing of the revision petition. Taking note of the contentions of the petitioner, however, the 3rd respondent found that the ends of justice would be met by directing the petitioner to pay an amount of Rs.10,00,000/- for each year (total Rs.20,00,000/-) as against a confirmed penalty of approximately Rs.1 crore 30 lakhs. On going through Ext.P14 order of the 3rd respondent, I am of the view that the said order does not call for any interference, in these proceedings under Article 226 of the Constitution of India. I therefore, dismiss the writ petition in its challenge against Ext.P14 order of the 3rd respondent.

Counsel for the petitioner would seek some time to comply with the directions in Ext.P14 order. Taking note of the plea of financial hardship urged on behalf of the petitioner, I direct that if the petitioner complies with the directions in Ext.P14 order, within three weeks from the date of receipt of a copy of this judgment, then the same shall be treated as in compliance with Ext.P14 order and the 3rd respondent shall pass thereafter proceed to pass final orders in the revision petition, within a period of six weeks thereafter, after hearing the petitioner.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /10.12.15