IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 400 of 2015 (Y)

PETITIONER(S):

KAMAKSHI CONSTRUCTIONS,
T.C.32/4250, PAZHAYANADAKKAVU,
THRISSUR, PIN: 680 001, REPRESENTED BY ITS
MANAGING PARTNER R.PARAMESWARAN.

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

RESPONDENT(S):

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1. COMMERCIAL TAX OFFICER (WORKS CONTRACT & LUXURY TAX),
   OFFICE OF THE DY. COMMISSIONER, COMMERCIAL TAXES,
   CIVIL STATION, THRISSUR - 680 003.

2. THE ASST. COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, PANKAJ BUILDINGS,
   WEST FORT, THRISSUR - 680 004.

BY GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

WP(C).No. 400 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1:	COPY OF THE APPELLATE ORDER DATED 17/12/2013 OF THE DY. COMMISSIONER (APPEALS), ERNAKULAM.
EXT.P2:	COPY OF ORDER DATED 19/03/2014 ISSUED BY THE 1ST RESPONDENT.
EXT.P3:	COPY OF APPEAL MEMORANDUM AGAINST EXT.P2.
EXT.P4:	COPY OF PETITION FOR STAY FILED IN EXT.P3 APPEAL.
EXT.P5:	COPY OF FORM NO.20H.
EXT.P6:	COPY OF ANNUAL RETURN FOR THE YEAR 2008-2009.
EXT.P7:	COPY OF AUDIT REPORT IN FORM 13 AND 13A FOR THE YEAR 2008-2009.
EXT.P8:	COPY OF STAY ORDER DATED 18/12/2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 400 of 2015 (Y)

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Dated this the 7th day of January, 2015

<u>JUDGMENT</u>

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the first respondent. Against Ext.P2 assessment order, petitioner had preferred Ext.P3 appeal along with Ext.P4 stay application before the second respondent. The second respondent has now passed Ext.P8 order on the stay petition directing the petitioner to pay 30% of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Ext.P2 assessment order.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the second respondent had not exercised his discretion validly while passing the said order.

3. Heard Sri.S.Anil Kumar, the learned counsel appearing for petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader appearing for respondents.

4. On a consideration of the facts and circumstances of the case and submissions made across the bar, I dispose the

writ petition with the following directions:-

(i) In Ext.P8 order, the second respondent does not state reasons as to why the petitioner was required to deposit the amounts as a condition for the grant of stay. This Court has held in **Archana Agencies vs. Commecial Tax Officer** (2014 (2) KLT 715) that an authority considering a stay petition is bound to give reasons even while granting conditional stay.

(ii) Ext.P8 order is quashed and the second respondent is directed to reconsider the matter and pass fresh orders in the stay petition filed by the petitioner, within one month from the date of receipt of a copy of this judgment after affording an opportunity of hearing to the petitioner.

(iii) Recovery steps, initiated against the petitioner shall be kept in abeyance till such time as fresh orders are passed by the second respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/07/01/