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. 411 of 2015 (B)

PETITIONER(S):

M/S. THATHA HI-TECH INDUSTRIES,
8/817, NIDA, KANJIKODE, PALAKKAD,
REPRESENTED BY ITS MANAGING PARTNER,
SRI.PRADHIP T.INASU.

BY ADVS.SRI.N.MURALEEDHARAN NAIR,
SRI.V.K.SHAMUSUDHEEN,
SMT.K.HYMAVATHY.

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   IIIRD CIRCLE, PALAKKAD-678 001.

2. **THE ASSISTANT COMMISSIONER (APPEALS),**
   DEPARTMENT OF COMMERCIAL TAXES,
   PALAKKAD-678 001.

3. **THE INSPECTING ASSISTANT COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES,
   PALAKKAD-678 001.

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. 411 of 2015 (B)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2013-14 DATED 11/07/2014.
EXT.P2	COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 16/08/2014.
EXT.P3	COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 16/08/2014.
EXT.P4	COPY OF THE INTERIM ORDER PASSED BY 2ND RESPONDENT DATED 20/12/2014.
EXT.P5	COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY 3RD RESPONDENT DATED 08/08/2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 411 of 2015 (B)

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Dated this the 7th day of January, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the first respondent. Against Ext.P1 assessment order, petitioner preferred Ext.P2 appeal before the second respondent. Along with the appeal, he had also preferred Ext.P3 stay petition. The second respondent has now passed Ext.P4 interim order on the stay petition directing the petitioner to pay 40% of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Ext.P1 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.N.Muraleedharan Nair, 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.P4 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.P4 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/