IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 1444 of 2015 (E)

PETITIONER :

MUHAMMED RAFI,
M/S.M.A.K.CASHEWS, AMBALAMUKUNNU,
NETTAYAM.P.O., KOLLAM DISTRICT.

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

RESPONDENT(S):
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1. THE ASST. COMMISSIONER (ASSESSMENT),
   COMMERCIAL TAXES SPECIAL CIRCLE, KOTTARAKKARA-691 506.

2. DEPUTY COMMISSIONER (APPEALS),
   DEPARTMENT OF COMMERCIAL TAXES, KOLLAM-691 001

R1 & R2 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).NO.1444/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1	COPY OF THE RETURN FOR THE YEAR 2012-13 FILED BY THE PETITIONER DATED 04/02/2014
P2	COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 30/09/2014
P3	COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 08/11/2014.
P4	COPY OF THE STATEMENT GIVING DETAILS OF H FORMS
P4(A)	COPY OF THE STATEMENT GIVING DETAILS OF C FORMS
P5	COPY OF THE AUDIT REPORT FILED BY THE PETITIONER DATED 30/11/2013.
P6	COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 17/12/2014.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1444 OF 2015 (E)

Dated this the 15th day of January, 2015

J U D G M E N T

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the 1st respondent. Against Ext.P2 assessment order, petitioner preferred Ext.P3 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred a stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P6 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 2nd respondent had not exercised his discretion validly while passing the said order.

3. I have heard Sri.Harisankar V. Menon, the learned counsel appearing for the petitioner as also Smt.Sobha Annamma Eappen, the learned counsel appearing for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I dispose the writ petition with the following directions:-

(i) In Ext.P6 order, the 2nd 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 v. 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.P6 order is quashed and the 2nd 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 2nd respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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