IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 1811 of 2015 (B)

PETITIONER(S):

M/S. KALPATHARU RESORTS PVT. LTD.
KURUMANDAL, SOUTH PARAVUR, KOLLAM
REPRESENTEDBY ITS GENERAL MANAGER, JIJUMON C.M

BY ADVS.SRI.S.SANTHOSH KUMAR
SMT.P.LISSY JOSE.

RESPONDENT(S):
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1. **THE DEPUTY COMMISSIONER (APPEALS-1)**
   COMMERCIAL TAXES, KOLLAM - 691 013.

2. **THE INTELLIGENCE OFFICER (INVESTIGATION BRANCH)**
   COMMERCIAL TAXES, COMMERCIAL TAX COMPLEX, ASRAMAM
   KOLLAM - 691 002.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1811 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P-1: TRUE COPY OF PENALTY ORDER DATED 30.6.2014 FOR THE YEAR 2013 - 14.

EXT.P-2: TRUE COPY OF PENALTY ORDER DATED 30.6.2014 FOR THE MONTH OF APRIL, 2014.

EXT.P-3: TRUE COPY OF THE APPEAL DATED 26.11.2014 FOR THE YEAR 2013 - 14.

EXT.P-4: TRUE COPY OF APPEAL DATED 26.11.2014 FOR THE MONTH OF APRIL, 2014.

EXT.P-5: TRUE COPY OF STAY PETITION DATED 26.11.2014 FILED IN EXT.P3 APPEAL.

EXT.P-6: TRUE COPY OF STAY PETITION DATED 26.11.2014 FILED IN EXT.P4 APPEAL.

EXT.P-7: TRUE COPY OF STAY ORDER DATED 5.12.2014 PASSED IN THE APPEAL FOR THE YEAR 2013 - 14.

EXT.P-8: TRUE COPY OF STAY ORDER DATED 5.12.2014 PASSED IN THE APPEAL FOR THE MONTH OF APRIL, 2014.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1811 OF 2015 (B)

Dated this the 22nd day of January, 2015

J U D G M E N T

The petitioner is an assessee under the Kerala Tax on Luxuries Act, 1976. Against Exts.P1 and P2 penalty orders, petitioner preferred Exts.P3 and P4 appeals before the 1st respondent. Along with the appeals, the petitioner had also preferred Exts.P5 and P6 stay petitions. The 1st respondent has now passed Exts.P7 and P8 orders on Exts.P5 and P6 stay petitions directing the petitioner to pay 30% and 35% of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Exts.P1 and P2 penalty orders.

2. In the writ petition, the petitioner impugns the said conditional orders of stay, inter alia, on the ground that the 1st respondent had not exercised his discretion validly while passing the said orders.

3. I have heard Sri.S.Santhosh Kumar, 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 Exts.P7 and P8 orders, the 1st 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) Exts.P7 and P8 orders are quashed and the 1st respondent is directed to reconsider the matters and pass fresh orders in the stay petitions 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 1st respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp