

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 2723 of 2015 (M)

PETITIONER(S):

**D.PRAKASH,
ASWATHI GUEST HOUSE, ASRAMAM, KOLLAM.**

**BY ADVS.SRI.A.SUDHI VASUDEVAN
SMT.K.PUSHPAVATHI
SRI.R.SYLESHWAREN NAIR
SRI.JOSE JONES JOSEPH**

RESPONDENT(S):

- 1. ASSISTANT COMMISSIONER-II.
SPECIAL CIRCLE, KOLLAM-691001.**
- 2. DEPUTY COMMISSIONER (APPEALS) II
COMMERCIAL TAXES, KOLLAM-691001.**
- 3. DEPUTY TAHSILDAR (SALES TAX)
OFFICE OF THE TAHSILDAR (R.R), KOLLAM-691001.**

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: A TRUE COPY OF THE ORDER DATED 29.3.2012 ISSUED BY THE INTELLIGENCE OFFICER SQUAD NO.I, COMMERCIAL TAXES, KOLLAM.
- EXT.P-2: A TRUE COPY OF THE ORDER DATED 27.3.2014 PASSED BY THE DEPUTY COMMISSIONER (APPEALS), KOLLAM.
- EXT.P-3: A TRUE COPY ORDER DATED 19.8.2014 PASSED BY THE SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM ON INTP NO.15/14 IN T.A. 20/14
- EXT.P-4: A TRUE COPY OF THE CERTIFICATE DATED 23.1.2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER EVIDENCING PAYMENT OF 1/3RD OF THE DISPUTED AMOUNT
- EXT.P-5: A TRUE COPY OF THE SECURITY BOND EXECUTED BY THE PETITIONER ON 24.9.2014
- EXT.P-6: A TRUE COPY ASSESSMENT ORDER DATED 28.2.2014 PASSED BY THE 1ST RESPONDENT
- EXT.P-7: A TRUE COPY OF THE APPEAL DATED 11.3.2014 PREFERRED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- EXT.P-8: A TRUE COPY OF THE DEMAND NOTICE DATED 16.12.2014 U/S.7 OF THE REVENUE RECOVERY ACT.
- EXT.P-9: A TRUE COPY OF THE DEMAND NOTICE PRIOR TO ATTACHMENT OF LAND IN FORM - 10 U/S.34 OF THE REVENUE RECOVERY ACT ISSUED BY THE 3RD RESPONDENT ON 16.12.2014 TO THE PETITIONER
- EXT.P-10: A TRUE COPY OF THE ORDER 14.5.2014 PASSED BY THE 2ND RESPONDENT
- EXT.P-11: A TRUE COPY OF THE REPLY DATED 17.1.2015 SENT BY SRI.JOHN THARAKAN TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 2723 of 2015 (M)

.....
Dated this the 3rd day of February, 2015

JUDGMENT

Against Ext.P6 assessment order under the Kerala General Sales Tax Act, 1963, the petitioner has preferred Ext.P7 appeal before the 2nd respondent. Along with the appeal, the petitioner also preferred a stay petition. The 2nd respondent has now passed Ext.P10 interim 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.P6 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 has not exercised his discretion validly while passing the said order.
3. Heard Sri.A.Sudhi Vasudevan, 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.P10 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 vs. Commercial 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.P10 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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

