IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(C).No. 2727 of 2015 (M)

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PETITIONER:

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P.ZUHRA, PROPRIETORIX,
ANGADIPURAM BLUE METALS,
ERANTHOD, VALMBUR, MALAPPURAM.

BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA

RESPONDENT(S):

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1. COMMERCIAL TAX OFFICER II,
   DEPARTMENT OF COMMERCIAL TAXES,
   PERINTHALMANNA-679322.

2. DEPUTY COMMISSIONER (APPEALS),
   DEPARTMENT OF COMMERCIAL TAXES,
   THEVARA, ERNAKULAM-682015.

3. INSPECTING ASSITANT COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   MALAPPURAM AT MANJERI, PIN 676505.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**WP(C).No. 2727 of 2015 (M)**
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**APPENDIX**

**PETITIONER(S)' EXHIBITS:**
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**EXHIBIT-P1:** TRUE COPY OF THE PENALTY ORDER UNDER SECTION 67 OF KVAT ACT DATED 31.3.2008.

**EXHIBIT-P2:** TRUE COPY OF THE ORDER OF THE FIRST APPELLATE AUTHORITY DATED 6.2.2012.

**EXHIBIT-P3:** TRUE COPY OF THE ORDER OF THE TRIBUNAL IN TA (KVAT) 1142 OF 2013 DATED 23.7.2014.

**EXHIBIT-P4:** TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT DATED 31.1.2014.

**EXHIBIT-P5:** TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR AY 2007-08 DATED 15.2.2014.

**EXHIBIT-P6:** TRUE COPY OF THE CONDITIONAL ORDER OF STAY PASSED BY THE 2ND RESPONDENT DATED 20.10.2014.

**EXHIBIT-P7:** TRUE COPY THE ORDER OF THE INTELLIGENCE OFFICER DATED 12.11.2014.

**EXHIBIT-P8:** TRUE COPY OF THE CHALAN EVIDENCING THE REMITTANCE OF COMPOUNDING FEE DATED 12.11.2014.

**EXT-P8(A):** TRUE COPY OF THE CHALAN EVIDENCING THE REMITTANCE OF TAX AMOUNT DATED 26.11.2014.

**EXHIBIT-P9:** TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 3RD RESPONDENT UNDER SECTION 7 OF THE RR ACT (AY-2007-2008) DATED 9.5.2014.

**RESPONDENT(S)' EXHIBITS: - NIL**
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**/TRUE COPY/**

**P.A. TO JUDGE**

**mbr/**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C) No. 2727 of 2015 (M)**

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Dated this the 28th day of January, 2015

**JUDGMENT**

For the assessment year 2007 - 2008, the petitioner was served with Ext.P1 penalty order and Ext.P4 assessment order under the Kerala Value Added Tax Act, 2003. Against Ext.P4 Assessment order, petitioner preferred Ext.P5 appeal before the second respondent, along with a stay petition. The second respondent has now passed Ext.P6 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.P4 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.K.I.Mayankutty Mather, 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.P6 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 **<u>Archana Agencies vs. Commecial Tax Officer</u>** (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 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/28/01/