

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 3000 of 2015 (Y)

PETITIONER(S) :

SANTHOSHM KUMAR S.J. ,
PROPRIETOR, M/S.SANTHOSH GLASS HOUSE,
CHEERANKAVU ,
EZHUKONE, KOLLAM.

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

RESPONDENT(S) :

1. THE DEPUTY COMMISSIONER (APPEALS) ,
COMMERCIAL TAXES ,
KOLLAM - 691 013.
2. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES ,
KOLLAM - 691 013.
3. THE COMMERCIAL TAX OFFICER -II ,
COMMERCIAL TAX DEPARTMENT ,
KOTTARAKARA - 691 506.
4. THE DEPUTY TAHSILDAR (RR) ,
TALUK OFFICE ,
KOTTARAKKARA - 691 506.

BY SENIOR GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS

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EXT. P1: TRUE COPY OF ASSESSMENT ORDER DATED 28/4/2014 PASSED BY THE 3RD RESPONDENT.

EXT. P2: TRUE COPY OF PENALTY ORDER DATED 28/4/2014 PASSED BY THE 3RD RESPONDENT.

EXT. P3: TRUE COPY OF PURCHASE LIST OF M/S.S.R.STEEL AND ELECTRICALS FOR THE MONTH OF JANUARY 2010.

EXT. P4: TRUE COPY OF APPEAL DATED 23/6/2014 AGAINST EXT.P1 ASSESSMENT ORDER.

EXT. P5: TRUE COPY OF REVISION DATED 23/6/2014 AGAINST EXT.P2 PANALTY ORDER.

EXT. P6: TRUE COPY OF STAY PETITION DATED 23/6/2014 AGAINST EXT.P4 APPEAL.

EXT. P7: TRUE COPY OF STAY PETITION DATED 23/6/2014 FILED IN EXT.P5 REVISION.

EXT. P8: TRUE COPY OF CONDITIONAL STAY ORDER DATED 26/9/2014 PASSED BY THE 1ST RESPONDENT.

EXT. P9: TRUE COPY OF CONDITIONAL STAY ORDER DATED 24/9/2014 PASSED BY THE 2ND RESPONDENT.

EXT.P10: TRUE COPY OF RR DEMAND NOTICE DATED 19/12/2014 ISSUED BY THE 4TH RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 3000 of 2015 (Y)
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Dated this the 30th day of January, 2015

JUDGMENT

For the assessment year 2012 - 2013, the petitioner was served with Ext.P1 assessment order and Ext.P2 penalty order under the Kerala Value Added Tax Act, 2003. Against Ext.P1 order, he has preferred Ext.P4 appeal along with Ext.P6 stay petition before the 1st respondent. Against Ext.P2 order, the petitioner has preferred Ext.P5 revision and P7 stay petition before the 2nd respondent. The 1st and 2nd respondents have now passed Exts.P8 and P9 interim orders on the stay petitions 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.P1 assessment order and Ext.P2 penalty 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.S.Santhosh Kumar, 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 the submissions made across the bar, I dispose the writ petition with the following directions:-

(i) In Exts.P8 and P9 orders, the 1st and 2nd respondents do 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) Exts.P8 and P9 orders are quashed and the 1st and 2nd respondents are 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, pursuant to Ext.P10 Revenue Recovery notice shall be kept in abeyance till such time, as fresh orders are passed by the 1st and 2nd respondents, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE