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. 3008 of 2015 (A)

PETITIONER(S):

T.S.SAJIMON,
PROPRIETOR, M/S.ESSAR TRADERS,
KANJIRAPPALLY,
KOTTAYAM.

BY ADV. SRI.C.K.SREEJITH.

RESPONDENT(S):

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1. COMMERCIAL TAX OFFICER,
   PONKUNNAM,
   KOTTAYAM - 686 506.

2. THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, KOTTAYAM - 686 001.

3. STATE OF KERALA,
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, GOVT. SECRETARIAT,
   TRIVANDRUM - 695 001.

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.

WP(C).No. 3008 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P-1: THE TRUE COPY OF THE ORDER NO.32050811204/12-13/23.9.14.

EXT.P-2: THE TRUE COPY OF DEMAND NOTICE IN FORM NO.12 DATED 23.9.14.

EXT.P-3: THE TRUE COPY OF THE APPEAL MEMORANDUM IN FORM NO.29 DATED 29.12.2014.

EXT.P-4: THE TRUE COPY OF STAY PETITION IN FORM NO.30 DTD 29.12.14.

EXT.P-5: THE TRUE COPY OF STAY ORDER PASSED BY THE 2ND RESPONDENT DTD 9.1.15.

EXT.P-6: TRUE COPY OF ANNUAL RETURN FOR 2012 - 13.

EXT.P-7: THE TRUE COPY OF THE FORM NO.13 & 13A FOR 2012 - 13.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.3008 of 2015 (A)

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Dated this the 30th day of January, 2015

JUDGMENT

The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003. Against Exts.P1 Assessment order and Ext.P2 demand notice, the petitioner has preferred Exts.P3 appeal along with P4 stay petition before the second respondent. The second respondent has now passed Ext.P5 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 Exts.P1 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.C.K.Sreejith, 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.P5 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. Commercial 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.P5 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/30/01/