IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 3157 of 2015 (T)

PETITIONER(S):

M/S.KALPATHARU RESORTS PVT. LTD.,
KURUMANDAL, SOUTH PARAVUR, KOLLAM,
REPRESENTED BY 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,
COMMERCIAL TAXES, KOLLAM - 691 013.

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

BY GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

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

rs.

WP(C).No. 3157 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT-P1- TRUE COPY OF THE PENALTY ORDER DATED 30/06/2014 FOR THE YEAR 2013-14

EXHIBIT-P2- TRUE COPY OF THE PENALTY ORDER DATED 30/06/2014 FOR THE MONTH OF APRIL, 2014.

EXHIBIT-P3- TRUE COPY OF THE APPEAL DATED 26/11/2014 FOR THE YEAR 2013-14

EXHIBIT-P4- TRUE COPY OF THE APPEAL DATED 26/11/2014 FOR THE MONTH OF APRIL, 2014.

EXHIBIT-P5- TRUE COPY OF THE STAY PETITION DATED 26/11/2014 FILED IN EXHIBIT-P3 APPEAL.

EXHIBIT-P6- TRUE COPY OF THE STAY PETITION DATED 26/11/2014 FILED IN EXHIBIT-P4 APPEAL.

EXHIBIT-P7- TRUE COPY OF THE STAY ORDER DATED 08/12/2014 PASSED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.3157 of 2015

Dated this the 2nd day of February, 2015

J U D G M E N T

Against Exts.P1 and P2 penalty orders, the 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 Ext.P7 order on the stay petition directing the petitioner to pay 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 order of stay, inter alia, on the ground that the 1st respondent had not exercised his discretion validly while passing the said order.

3. Heard Sri.S.Santhosh Kumar, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

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. P7 order, 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 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.P7 order is quashed and the 1st respondent is directed to reconsider the matter and pass fresh orders in the stay petition, within one month from the date of receipt of a copy of this judgment after hearing the petitioner.

(iii) Recovery steps, if any, 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

mns/