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. 3184 OF 2015 (W)

PETITIONER(S):

M/S. K.R TOURIST HOME(HOTEL HILTON)
REPRESENTED BY ITS MANAGING PARTNER, D.RAJKUMAR
VARKALA, THIRUVANANTHAPURAM

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

RESPONDENT(S):

1. INTELLIGENCE OFFICER
SQUAD NO.II, DEPARTMENT OF COMMERCIAL TAXES, ATTINGAL
THIRUVANANTHAPURAM.

2. ASSISTANT COMMISSIONER -III (ASSESSMENT)
COMMMERCIAL TAXES, SPECIAL CIRCLE, KARAMANA
THIRUVANANTHAPURAM

3. DEPUTY COMISSIONER(APPEAL)
COMMERCIAL TAXES, THIRUVANANTHAPURAM

4. INTELLIGENCE OFFICER
SQUAD NO.1, DEPARTMENT OF COMMERCIAL TAXES, 'C' BLOCK
REVENUE COMPLEX, THIRUVANANTHAPURAM-695 033

5. COMMERCIAL TAX OFFICER
ATTINGAL, THIRUVANANTHAPURAM

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

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

WP(C).NO. 3184 OF 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1:TRUE COPY OF THE ORDER NO.CR.33/2011-12 DATED 30.05.2014 ISSUED BY THE 1ST RESPONDENT

EXT P2:A TRUE COPY OF THE STAY ORDER DATED 31.10.2014 PASSED BY THE DEPUTY COMMISSIONER APPEAL THIRUVANANTHAPURAM

EXT P3:TRUE COPY OF THE RECEIPT DATED 06.12.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER

EXT P4:TRUE COPY OF THE SECURITY BOND EXECUTED BY THE PETITIONER ON 06.12.2014

EXT P5:TRUE COPY ASSESSMENT ORDER DATED 14.10.2014 PASSED BY THE 2ND RESPONDENT UNDER SECTION 19(1) OF THE KGST ACT FOR THE YEAR 2011-12

EXT P6:A TRUE COPY OF THE DEMAND NOTICE DATED 14.10.2014 ISSUED BY THE 2ND RESPONDENT DEMANDING TURNOVER TAX FROM THE PETITIONER PURSUANT TO EXT P5

EXT P7:A TRUE COPY OF THE DEMAND NOTICE DATED 14.10.2014 ISSUED BY THE 2ND RESPONDENT DEMANDING PENALTY/PENAL INTEREST FROM THE PETITIONER PURSUANT TO EXT P5

EXT P8:A TRUE COPY OF THE APPEAL DATED 11.11.2014 PREFERRED BY THE PETITIONER BEFORE THE 3RD RESPONDENT AGAINST EXT P5

EXT P9:A TRUE COPY OF THE APPLICATION DATED 11.11.2014 FOR STAY OF THE RECOVERY OF THE TAX, INTEREST AND CESS DEMANDED PURSUANT TO EXT P5

EXT P10:A TRUE COPY OF THE ASSESSMENT ORDER DATED 14.10.2014 PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2012-13

EXT P11:A TRUE COPY OF THE DEMAND NOTICE DATED 14.10.2014 ISSUED BY THE 2ND RESPONDENT DEMANDING TURNOVER TAX FROM THE PETITIONER

EXT P12:A TRUE COPY OF THE DEMAND NOTICE DATED 14.10.2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER

EXT P13:A TRUE COPY OF THE APPEAL DATED 11.11.2014 PREFERRED BY THE PETITIONER BEFORE THE 3RD RESPONDENT AGAINST EXT P10

EXT P14:A TRUE COPY OF THE APPLICATION DATED 11.11.2014 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT FOR STAY OF THE RECOVERY OF THE TAX, INTEREST AND CESS DEMANDED PURSUANT TO EXT P10

EXT P15: A TRUE COPY OF THE STAY ORDER 22.12.2014 PASSED BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.3184 of 2015

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Dated this the 2nd day of February, 2015

J U D G M E N T

Against Exts.P5 and P10 assessment orders, petitioner preferred Exts.P8 and P13 appeals before the 3rd respondent. Along with the appeals, the petitioner had also preferred Exts. P9 and Ext.P14 stay petitions. The 3rd respondent has now passed Ext.P15 order 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 Exts.P5 and P10 assessment orders.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 3rd respondent had not exercised his discretion validly while passing the said order.

3. Heard Sri.A.Sudhi Vasudevan, 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.P15 order, the 3rd 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.P15 order is quashed and the 3rd 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 3rd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/