

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. 3312 of 2015 (L)

PETITIONER :

**HEADER SYSTEM (INDIA) LTD.,
NEDUMKANDOM, IDUKKI DISTRICT
REPRESENTED BY ITS DIRECTOR K.V.THOMAS KUTTY.**

**BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR
SRI.K.UMAMAHESWAR**

RESPONDENTS :

- 1. INTELLIGENCE OFFICER,
SQUAD NO.V, IDUKKI AT KATTAPPANA, PIN - 695 121.**
- 2. INTELLIGENCE OFFICER,
SQUAD NO.I, IDUKKI AT KATTAPPANA, PIN - 695 121.**
- 3. ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, SPECIAL CIRCLE,
THODUPUZHA-694 112.**
- 4. THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL,
THEVARA, KOCHI - 682 015.**

R1 TO R4 BY SR. 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:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1. COPY OF THE PENALTY ORDER DATED 29.06.2010 OF THE 1ST RESPONDENT FOR THE YEAR 2008-09.
- EXHIBIT P1(a). COPY OF THE PENALTY ORDER DATED 22.09.2010 OF THE 1ST RESPONDENT FOR THE YEAR 2009-10.
- EXHIBIT P1(b). COPY OF THE PENALTY ORDER DATED 07.02.2012 OF THE 2ND RESPONDENT FOR THE YEAR 2006-07.
- EXHIBIT P1(c). COPY OF THE PENALTY ORDER DATED 07.02.2012 OF THE 2ND RESPONDENT FOR THE YEAR 2007-08.
- EXHIBIT P1(d). COPY OF THE PENALTY ORDER DATED 07.02.2012 OF THE 2ND RESPONDENT FOR THE YEAR 2008-09.
- EXHIBIT P2. COPY OF ORDER DATED 14.03.2014 OF THE DY.COMMISSIONER (APPEALS), KOTTAYAM IN RESPECT OF EXT.P1 AND EXT.P1(a) ORDERS.
- EXHIBIT P2(a). COPY OF ORDER DATED 18.03.2014 OF THE DY.COMMISSIONER (APPEALS), KOTTAYAM IN RESPECT OF EXT.P1(b) TO EXT.P1(d) ORDERS.
- EXHIBIT P3. COPY OF APPEAL MEMORANDUM FOR 2008-2009 AGAINST EXT.P2.
- EXHIBIT P3(a). COPY OF APPEAL MEMORANDUM FOR 2009-2010 AGAINST EXT.P2.
- EXHIBIT P3(b). COPY OF APPEAL MEMORANDUM FOR 2006-2007 AGAINST EXT.P2(a).
- EXHIBIT P3(c). COPY OF APPEAL MEMORANDUM FOR 2007-2008 AGAINST EXT.P2(a).
- EXHIBIT P3(d). COPY OF APPEAL MEMORANDUM FOR 2008-2009 AGAINST EXT.P2(a).
- EXHIBIT P4. COPY OF STAY PETITION IN EXT.P3 APPEAL.
- EXHIBIT P4(a). COPY OF STAY PETITION IN EXT.P3(a) APPEAL.
- EXHIBIT P4(b). COPY OF STAY PETITION IN EXT.P3(b) APPEAL.
- EXHIBIT P4(c). COPY OF STAY PETITION IN EXT.P3(c) APPEAL.
- EXHIBIT P4(d). COPY OF STAY PETITION IN EXT.P3(d) APPEAL.
- EXHIBIT P5. COPY OF ORDER DATED 10.12.2014 ISSUED BY THE 4TH RESPONDENT ON EXT.P4 TO EXT.P4(d) STAY PETITIONS.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.3312 of 2015 (L)

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Dated this the 2nd day of February, 2015

JUDGMENT

The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003. Against Ext.P1 series of penalty order and P2 series of assessment order under the KVAT Act, the petitioner has preferred Ext.P3 series of appeal along with Ext.P4 series of stay petitions before the 4th respondent. The 4th respondent has now passed Ext.P5 interim order on the stay petitions directing the petitioner to pay 50% of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Ext.P1 series of penalty order.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 4th respondent has not exercised his discretion validly while passing the said order.
3. Heard Sri.S.Anil 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 submissions made across the bar, I dispose the writ petition with the following directions:-

(i) In Ext.P5 order, the 4th 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 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) Ext.P5 order is quashed and the 4th 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 4th respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE