

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 3992 of 2015 (Y)

PETITIONER(S):

**M.K. BASHEER, PROPRIETOR,
MALARVADI KALYANAMANDAPAM,
PARUTHIPPARA, THIRUVANANTHAPURAM.**

**BY DR.K.B.MUHAMED KUTTY, SENIOR ADVOCATE.
ADVS. SRI.K.M.FIROZ,
SMT.M.SHAJNA,
SRI.S.KANNAN.**

RESPONDENT(S):

- 1. THE INTELLIGENCE OFFICER (INVESTIGATION BRANCH -II),
COMMERCIAL TAXES DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.**
- 2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, THIRUVANANTHAPURAM - 695 001.**
- 3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, THIRUVANANTHAPURAM
AND AUTHORIZED OFFICER UNDER REVENUE
RECOVERY ACT, PIN - 695 001.**
- 4. LUXURY TAX OFFICER, COMMERCIAL TAXES,
THIRUVANANTHAPURAM - 695 001.**

BY GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: A TRUE COPY OF THE STAY ORDER DTD. 09.01.2015 PASSED BY THE 2ND RESPONDENT.
- EXT.P2: A TRUE COPY OF THE PENALTY ORDER DTD 30.07.2014 FOR THE YEAR 2009-2010 ISSUED BY THE 1ST RESPONDENT.
- EXT.P3: A TRUE COPY OF THE PENALTY ORDER DTD. 30.07.2014 FOR THE YEAR 2010-11 ISSUED BY THE 1ST RESPONDENT.
- EXT.P4: A TRUE COPY OF THE PENALTY ORDER DTD 30.07.2014 FOR THE YEAR 2011-12 ISSUED BY THE 1ST RESPONDENT.
- EXT.P5: A TRUE COPY OF THE APPEAL PETITION DTD. 17.12.2014 AGAINST PENALTY ORDER FOR THE YEAR 2009-10 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P6: A TRUE COPY OF THE APPEAL PETITION DTD. 17.12.2014 AGAINST PENALTY ORDER FOR THE YEAR 2010-11 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P7: A TRUE COPY OF THE APPEAL PETITION DTD. 17.12.2014 AGAINST PENALTY ORDER FOR THE YEAR 2011-12 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P8: A TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER AGAINST PENALTY ORDER FOR THE YEAR 2009-10.
- EXT.P9: A TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER AGAINST PENALTY ORDER FOR THE YEAR 2010-11.
- EXT.P10: A TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER AGAINST PENALTY ORDER FOR THE YEAR 2011-12.
- EXT.P11: A TRUE COPY OF THE DEMAND NOTICE NO.A3-2329/14-15 DTD. 28/10/2014 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 3992 of 2015 (Y)

.....
Dated this the 9th day of February, 2015

JUDGMENT

Against Exts.P2 to P4 penalty orders, the petitioner has preferred Exts.P5 to P7 appeals along with Exts.P8 to P10 stay petitions before the 2nd respondent. The 2nd respondent has passed Ext.P1 stay 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 Ext.P2 to P4 penalty orders.

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

3. Heard Sri.K.B.Mohamedkutty, 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.P1 order, the 2nd 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.P1 order is quashed and the 2nd 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 2nd respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE