IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 4606 of 2015 (A)

PETITIONER(S):

ROY MATHEW,
PROPRIETOR,
PARAVANPARAMBIL ELECTRICAL & HOME APPLIANCES,
ALAKODE, KANNUR DISTRICT.

BY ADVS.SRI.K.SRIKUMAR (SR.)
SRI.K.MANOJ CHANDRAN
SRI.P.R.AJITHKUMAR

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   DEPARTMENT OF COMMERCIAL TAXES, THALIPARAMBA,
   KANNUR - 670 141.

2. **THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (APPEALS),**
   NIRMAL ARCADE, ERANHIPPALAM, KOZHIKODE - 673 006.

3. **THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES,**
   DEPARTMENT OF COMMERCIAL TAXES, KANNUR - 670 001.

4. **THE INSPECING ASSISTANT COMMISSIONER,**
   DEPARTMENT COMMERCIAL TAXES, KANNUR - 670 001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 4606 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE PENALTY ORDER ISSUED FOR THE YEAR 2009-2010 DATED 28.11.2013.

EXT.P1(a): TRUE COPY OF THE PENALTY ORDER ISSUED FOR THE YEAR 2010-2011 DATED 11.12.2013

EXT.P1(b): TRUE COPY OF THE PENALTY ORDER ISSUED FOR THE YEAR 2011-2012 DATED 11.12.2013.

EXT.P1(c): TRUE COPY OF THE PENALTY ORDER ISSUED FOR THE YEAR 2012-2013 DATED 11.12.2013.

EXT.P2: TRUE COPY OF THE APPEAL DATED 25.2.2014 FILED FOR THE YEAR 2009-2010.

EXT.P2(A): TRUE COPY OF THE APPEAL DATED 25.2.2014 FILED FOR THE YEAR 2010-2011.

EXT.P2(B): TRUE COPY OF THE APPEAL DATED 25.2.2014 FILED FOR THE YEAR 2011-2012.

EXT.P2(C): TRUE COPY OF THE APPEAL DATED 25.2.2014 FILED FOR THE YEAR 2012-2013.

EXT.P3: TRUE COPY OF THE STAY ORDER DATED 9.1.2015.

EXT.P4: TRUE COPY OF THE JUDGMENT DATED 26.11.2014 IN W.P.(C) NO.26942/2014.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 4606 of 2015 (A)

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Dated this the 13th day of February, 2015

<u>JUDGMENT</u>

The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003. Against Ext.P1 series of penalty orders under the KVAT Act, the petitioner has preferred Ext.P2 series of appeals along with a stay petition. The 3rd respondent has now passed Ext.P3 interim order, on the stay petition, directing the petitioner to pay 40% 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 orders.

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

3. Heard Sri.K.Srikumar, 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.P3 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 vs. Commecial 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.P3 order is quashed and the 3rd 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 3rd respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/13/02/