IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 4971 of 2015 (V)

PETITIONER:

GINOY JOSEPH,
CHENNOTH SANITARY WARES,
CMC V/385, CHENNOTH BUILDING,
CHERTHALA, PIN - 682 524, ALAPPUZHA DISTRICT.

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENT(S):
----

1. **THE ASSISTANT COMMISSIONER,**
   SPECIAL CIRCLE,
   DEPARTMENT OF COMMERCIAL TAXES,
   ALAPPUZHA, PIN - 688 001.

2. **THE DEPUTY COMMISSIONER (APPEALS),**
   DEPARTMENT OF COMMERCIAL TAXES,
   KOLLAM, PIN - 691 002.

3. **THE INSPECTING ASSISTANT COMMISSIONER,**
   DEPARTMENT OF COMMERCIALTAXES,
   ALAPPUZHA, PIN - 688 001.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 4971 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE REVISED ANNUAL RETURN FILED BY THE PETITIONER, FOR 2010-2011, DATED 4.11.2013.

EXT.P2: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE FIRST RESPONDENT FOR THE YEAR 2010-2011 DATED 29.12.2014.

EXT.P3: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT AGAINST EXT.P2, DATED 29.1.2015.

EXT.P4: TRUE COPY OF THE INTERLOCUTORY APPLICATION FOR STAY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 29.1.2015.

EXT.P5: TRUE COPY OF THE STAY ORDER PASSED BY THE 2ND RESPONDENT DATED 5.2.2015.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) No.4971 of 2015 (V)

..

Dated this the 18th day of February, 2015

JUDGMENT

Against Ext.P2 assessment order under the Kerala Value Added Tax Act, 2003, the petitioner has preferred Ext.P3 appeal before the 2nd respondent. Along with the appeal, the petitioner also preferred Ext.P4 stay petition. The 2nd respondent has now passed Ext.P5 interim 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 assessment order.

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

3. Heard Sri.R.Muraleedharan, the learned counsel appearing for petitioner and Sri.Sudheesh Kumar, 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 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. 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.P5 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

AMV/18/02/