

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. 5047 of 2015 (E)

PETITIONER:

**USMAN K., PROPRIETOR,
M/S.HARIS DIARY, PERUMPILAVU,
THRISSUR, S/O.ABDULLAKUTTY, AGED 45 YEARS,
RESIDING AT KALLATTAYIL HOUSE,
NEAR ANSAR WOMEN'S COLLEGE, KARIKKAD P.O.,
PERUMPILAVU, THRISSUR.**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER-I,
COMMERCIAL TAXES, KUNNAMKULAM - 688 002.**
- 2. ASSISTANT COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES,
THRISSUR - 688001.**

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. 5047 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: A TRUE COPY OF THE ASSESSMENT ORDER DATED 29/7/2014 ALONG
 WITH DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT.**
- P2: TRUE COPY OF THE APPEAL PETITION DATED 25/8/2014 PREFERRED
 BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- P3: TRUE COPY OF THE EARLY POSTING PETITION DATED 25/8/2014
 PREFERRED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- P4: TRUE COPY OF THE STAY PETITION DATED 25/8/2014 PREFERRED BY
 THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- P5: A TRUE COPY OF THE STAY ORDER DATED 4/12/2014 PASSED BY THE
 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS: - **NIL**

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.5047 of 2015
.....

Dated this the 18th day of February, 2015

J U D G M E N T

Against Ext.P1 assessment order, petitioner preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P4 stay petition. The 2nd respondent has now passed Ext.P5 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.P1 assessment order.

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

3. Heard Sri.Firoz K.M, the learned counsel for petitioner and Sri.Sudheesh Kumar, the learned Government Pleader 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 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.P5 order is quashed and the 2nd 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 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

