IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 5240 of 2015 (D)

PETITIONER:

BENNY ABRAHAM, S/O. LATE V.C.ABRAHAM,
AGED 54 YEARS, OKAMATTATHIL HOUSE,
KOOTHATTUKULAM.P.O.,
ERNAKULAM DISTRICT - 686 662,
PROPRIETOR, M/S. HOLLY HOCK RESORTS,
POTHAMEDU, MUNNAR.

BY ADVS.SRI.JAMES ABRAHAM (VILAYAKATTU)
SRI.P.BALAN (VYTTILA)

RESPONDENT(S):

----

1. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY,
   DEPARTMENT OF TOURISM, PARK VIEW,
   THIRUVANANTHAPURAM - 695 033.

2. THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, KOTTAYAM.

3. THE INSPECTING ASSISTANT COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   KATTAPPANA, IDUKKI.

4. THE INTELLIGENCE OFFICER,
   SQUAD NO.IV, NEDUMKANDOM, IDUKKI.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 5240 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: A TRUE COPY OF THE ORDER NO.M4-3560/09 DATED 18.2.2012 ISSUED BY THE DIRECTOR OF TOURISM DEPARTMENT.

EXT.P2: A TRUE COPY OF THE LETTER NO.M4-3003/2012 DATED 30-12-2014 ISSUED BY THE DEPUTY DIRECTOR (MARKETING) OF TOURISM DEPARTMENT.

EXT.P3: A TRUE COPY OF THE WEB PAGE IS DOWN LOADED FROM THE OFFICIAL WEBSITE OF THE 1ST RESPONDENT.

EXT.P4: A TRUE COPY OF THE NOTICE NO.ISI IV/CR 12/14-15 DATED 16.9.2014 ISSUED BY THE 4TH RESPONDENT.

EXT.P5: A TRUE COPY OF THE ORDER NO.ISI IV/IDKY/CR 12/14-15 DATED 30.10.2014.

EXT.P6: A TRUE COPIES OF THE CHALAN DATED 29.1.2015.

EXT.P7: A TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 20.1.2015 ISSUED BY THE 3RD RESPONDENT.

EXT.P8: A TRUE COPY OF THE ORDER DATED 23.2.2015 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.5240 OF 2015 (D)

Dated this the 9th day of March, 2015

J U D G M E N T

The petitioner is an assessee under the Kerala Tax on Luxuries Act, 1976. Against Ext.P5 penalty order, the petitioner had preferred three appeals before the 2nd respondent. The 2nd respondent has now passed Ext.P8 order 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 the penalty order.

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

3. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I dispose the writ petition with the following directions:-

(i) In Ext.P8 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.P8 order is quashed and the 2nd respondent is directed to reconsider the matter and pass fresh orders in the appeals 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp