IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No.5270 of 2015 (G)
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PETITIONER:
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P.ANIL KUMAR,PROPRIETOR,LAKSHMI AGENCIES,
NEAR STATE BANK OF INDIA,
KALAVOOR,ALAPPUZHA-688 538.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS

RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER,
SECOND CIRCLE,ALAPPUZHA-688 001.

2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES,ASRAMOM (P.O.),
KOLLAM-691 012.

3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES,STONE BRIDGE,
ALAPPUZHA-688 011.

BY GOVT. PLEADER SRI.SYAMKUMAR.S.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

**WP(C).No.5270 of 2015 (G)**
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**APPENDIX**

**PETITIONER'S EXHIBITS:**
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**EXT.P1:TRUE COPY OF ANNUAL RETURN FOR THE YEAR 2011-12 E-FILED BY THE PETITIONER ON 02.05.2012.**

**EXT.P2:TRUE COPY OF PENALTY ORDER DATED 26.12.2013 ISSUED U/S 47(6) OF THE KVAT ACT BY THE INTELLIGENCE OFFICER,ALAPPUZHA TO THE PETITIONER.**

**EXT.P3:TRUE COPY OF ASSESSMENT ORDER DATED 19.08.2014 ISSUED U/S 25 (1) OF THE KVAT ACT BY 1ST RESPONDENT TO THE PETITIONER.**

**EXT.P4:TRUE COPY OF APPEAL MEMORANDUM DATED 21.02.2014 AGAINT EXT.P2 PENALTY FILED BEFORE 2ND RESPONDENT.**

**EXT.P5:TRUE COPY OF APPEAL MEMORANDUM DATED 07.10.2014 FILED AGAINST EXT.P3 ASSESSMENT BEFORE 2ND RESPONDENT.**

**EXT.P6:TRUE COPY OF THE INTERLOCUTORY APPLICATION FOR STAY DATED 07.10.2014 FILED BY THE PETITIONER FOR THE YEAR 2011-12 BEFORE THE 2ND RESPONDENT.**

**EXT.P7:TRUE COPY OF THE RR NOTICE DATED 06.11.2014 FOR THE YEAR 2011-12 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.**

**EXT.P8:TRUE COPY OF THE JUDGMENT IN WP(C)NO.30437 OF 2014 (D) DATED 17.11.2014.**

**EXT.P9:TRUE COPY OF THE AGREEMENTS ADVANCED FOR ABSOLUTE STAY DATED 19.01.2015 INCLUDING FEW EVIDENCES SUBMITTED BY PETITIONER BEFORE 2ND RESPONDENT.**

**EXT.P10:TRUE COPY OF THE CONDITIONAL STAY ORDER DATED 23.01.2015 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.**

**RESPONDENT'S EXHIBITS: NIL**
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**//TRUE COPY//**

**P.S. TO JUDGE**

**pk**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C).NO.5270 OF 2015 (G)**

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**Dated this the 19th day of February, 2015**

**J U D G M E N T**

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the 1st respondent. Against Ext.P2 penalty order and Ext.P3 assessment order, petitioner preferred Exts.P4 and P5 appeals before the 2nd respondent. Along with Ext.P5 appeal, the petitioner had also preferred Ext.P6 stay petition. The 2nd respondent has now passed Ext.P10 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.P3 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. I have heard Sri.Devananda Narasimham, the learned counsel appearing for the petitioner as also Sri.Sudheesh Kumar.S., 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.P10 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.P10 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.

**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

prp