IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 5385 of 2015 (W)

PETITIONER:

V.S.HUSSAIN, AGED 42,
S/O.SHAHUL HAMEED, VALIYAVEETIL (H),
TIMBER INDIA TRADERS, ERATTUPETTA,
KOTTAYAM DISTRICT.

BY ADVS.SRI.PRAVEEN K. JOY
SRI.T.A.JOY

RESPONDENT(S):

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1. **THE DEPUTY COMMISSIONER(APPEAL),**
   KOTTAYAM-686001.

2. **THE COMMERCIAL TAX OFFICER,**
   PALA-686 575.

3. **THE TAHASILDHAR (R.R),**
   PALA-686 575.

4. **THE VILLAGE OFFICER,**
   ERATTUPETTA-686 121.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 5385 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: THE TRUE PHOTOCOPY OF THE STATUTORY APPEAL AGAINST THE ASSESSMENT FOR THE YEAR 2007-08 CST WITH COVERING LETTER.

EXT P2: THE TRUE PHOTOCOPY OF THE STATUTORY APPEAL BEFORE THE 1ST RESPONDENT FOR THE YEAR 2008-09 CST WITH COVERING LETTER.

EXT.P3 : THE TRUE PHOTOCOPY OF THE APPEAL FOR THE YEAR 2008-09.

EXT.P.4: THE TRUE PHOTOCOPY OF THE APPEAL AGAINST THE YEAR 2007-08.

EXT.P5: THE TURE PHOTOCOPY OF THE JUDGEMNT DATED 10.11.14 IN W.P.C 27669/14.

EXT.P6 : THE TRUE PHOTOCOY OF THE RECEIPT DATED 24.11.2014 FOR RS. 1,43,476/-.

EXT.P7: THE TURE PHOTOCOPY OF THE ORDER DATED 28.1.2015 IN KVATA 2514 & 2516/14 OF THE 1ST RESPONDENT.

EXT.P8: THE TURE PHOTOCOPY OF THE ORDER DATED 28.1.2015 IN KVATA 2513 & 2515/14 OF THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5385 OF 2015 (W)

Dated this the 20th day of February, 2015

<u>J U D G M E N T</u>

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against the assessment orders for the assessment years 2007-08 and 2008-09, petitioner had preferred Exts.P1 to P4 appeals before the 1st respondent. Along with the appeals, the petitioner had also preferred stay petitions. The 1st respondent has now passed Exts.P7 and P8 orders 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 assessment orders.

2. In the writ petition, the petitioner impugns the said conditional orders of stay, inter alia, on the ground that the 1st respondent had not exercised his discretion validly while passing the said order.

3. I have heard Sri.Praveen K. Joy, the learned counsel appearing for the petitioner as also Sri.Sudheesh Kumar, 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 Exts.P7 and P8 orders, the 1st 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) Exts.P7 and P8 orders are quashed and the 1st respondent is directed to reconsider the matter and pass fresh orders in the stay petitions 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 1st respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp