IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 5595 of 2015 (Y)

PETITIONER(S):

M/S.POONAM GRIHANIRMAN (P) LTD.,
MANIMADOM, AMBALAPPUZHA, A PRIVATE LIMITED COMPANY
REPRESENTED BY SRI.R.ANANTHA NARAYANAN
MANAGING DIRECTOR.

BY ADV. SMT.G.DEEPA

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER (W.C.),**
   COMMERCIAL TAXES, ALAPPUZHA-688001.

2. **THE INSPECTING ASST. COMMISSIONER,**
   COMMERCIAL TAXES, ALAPPUZHA-688001.

3. **THE STATE OF KERALA**
   REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT
   GOVERNMENT SECRETARIAT, TRIVANDRUM-695001.

   BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 5595 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: COPY OF THE INTERIM ORDER DT.28.1.2015 IN INTP.136/2014 IN TA(VAT)318/14 PASSED BY THE TRIBUNAL.

P2: COPY OF THE REVISED ASSESSMENT ORDER DT.18.12.2013 PASSED BY THE FIRST RESPONDENT.

P3: COPY OF THE JUDGMENT DT.13.6.2011 IN WPC.14636/11 PASSED BY THIS HON'BLE COURT.

P4: COPY OF THE JUDGMENT IN WPC.NO.13570/12 BY THIS HON'BLE COURT.

P5: COPY OF THE OBJECTION DT.1.4.2011 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

P6: COPY OF THE APPELLATE ORDER DT.28.8.14 IN KVATA(ALPY)98/2014 PASSED BY THE DY.COMMISSIONER(A), COMMERCIAL TAXES, KOLLAM.

P7: COPY OF THE APPEAL MEMORANDUM DT.7.10.2014 FILED BEFORE THE TRIBUNAL.

P8: COPY OF THE STAY PETITION ALONG WITH AFFIDAVIT DT.7.10.2014 FILED BEFORE THE TRIBUNAL.

P9: COPY OF THE REVENUE RECOVERY NOTICE DT.22.2.2014 ISSUED BY THE SECOND RESPONDENT.

P10: COPY OF THE JUDGMENT DT.25.7.2014 IN WPC.NO.18846/2014 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5595 OF 2015 (Y)

Dated this the 23rd 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. Against Ext.P2 assessment order, petitioner preferred Ext.P7 appeal before the Tribunal. Along with Ext.P7 appeal, the petitioner had also preferred Ext.P8 stay petition. The Tribunal has now passed Ext.P1 order on the stay petition directing the petitioner to pay 50% 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 Tribunal respondent had not exercised his discretion validly while passing the said order.

3. I have heard Smt.Deepa.G., 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.P1 order, the Tribunal 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.P1 order is quashed and the Tribunal 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 Tribunal, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp