IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 6036 of 2015 (D)

PETITIONER:

K.S.SHAJI AGED 42 YEARS
S/O. SANKARA NARAYANAN, KARUMANAPARAMBIL HOUSE
PUZHAKKAL VILLAGE (POST), THRISSUR DISTRICT.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT:

THE DEPUTY COMMISSIONER (APPEALS)
DEPARTMENT OF COMMERCIAL TAXES, KOTTAYAM
KOTTAYAM DISTRICT, PIN 686001.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 6036 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- **TRUE COPY OF THE ORDER OF INTELLIGENCE OFFICE (I.B.), DEPARTMENT OF COMMERCIAL TAXES, KOTTAYAM DATED 09-06-2014.**

EXHIBIT P2- **TRUE COPY OF THE REVISION PETITIONER FILED BY THE PETITIONER BEFORE THE RESPONDENT.**

EXHIBIT P3- **TRUE COPY OF THE INTERLOCUTORY PETITION SEEKING STAY OF THE RECOVERY IMPOSED PENALTY.**

EXHIBIT P4- **TRUE COPY OF THE ORDER NO. RP 265/2014-15 (STAY) 152/2014) DATED 13-01-2015 PASSED BY THE RESPONDENT.**

EXHIBIT P5- **TRUE COPY OF THE JUDGMENT OF HON'BLE SUPREME COURT PASSED IN RAVI GUPTA V., COMMISSIONER OF SALES TAX, DELHI, DATED 07-03-2009.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.6036 OF 2015 (D)

Dated this the 25th day of February, 2015

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

Against Ext.P1 assessment order, petitioner preferred Ext.P2 revision before the respondent. Along with the revision, the petitioner had also preferred Ext.P3 stay petition. The respondent has now passed Ext.P4 order on the stay petition directing the petitioner to pay 30% of Rs.5,11,466/- which is the penalty demanded 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 respondent had not exercised his discretion validly while passing the said order.

3. Heard Sri.M.K.Dileep Kumar, the learned counsel for petitioner and Sri.Sudheesh Kumar, the learned Government Pleader for respondent.

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.P4 order, the 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.P4 order is quashed and the 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 respondent as directed above and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

jjj

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