IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 6090 of 2015 (I)

PETITIONER(S):

M/S.OJIN FOODS (P) LTD., AGED 40 YEARS
CONVENT ROAD, KOZHIKODE
REPRESENTED BY ITS MANAGING DIRECTOR, JUNAIS A.K.

BY ADV. SRI.R.RAMADAS

RESPONDENT(S):
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1. THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, KOZHIKODE-673 001.

2. THE COMMERCIAL TAX OFFICER, 1ST CIRCLE
   KOZHIKODE, PIN-673001.

3. THE INSPECTING ASSISTANT COMMISSIONER
   DEPARTMENT OF COMMERCIAL TAXES, SALES TAX COMPLEX
   JAWAHAR NAGAR, KOZHIKODE-6.

BY GOVERNMENT PLEADER SRI.R.SUDHEESHKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 6090 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 :	**TRUE COPY OF THE ASSESSMENT ORDER DT.6-2-13 ISSUED BY THE ASSESSING AUTHORITY IN RESPECT OF THE PERIOD 2010-11.**
EXT.P2 :	**TRUE COPY OF THE NOTICE DT.15-10-14 ISSUED U/S.25 OF THE KVAT ACT, FROM THE R1 RECEIVED BY THE PETITIONER.**
EXT.P3 :	**TRUE COPY OF THE REPLY DT,14-11-14 SUBMITTED BY THE PETITIONER BEFORE R1.**
EXT.P4 :	**A STATEMENT SHOWING THE BIFURCATION OF THE TRUNOVER FOR THE PERIOD 2010-11.**
EXT.P5 :	**TRUE COPY OF THE ANNUAL RETURN SUBMITTED BY THE PETITIONER FOR THE PERIOD 2010-11.**
EXT.P6 :	**TRUE COPY OF THE ASSESSMENT ORDER DT.8-12-14 IN RESPECT OF THE PERIOD 2010-11 ISSUED BY R1.**
EXT.P7 :	**TRUE COPY OF THE DEMAND NOTICE DT.31-12-14 UNDER THE KERALA REVENUE RECOVERY ACT ISSUED BY R2.**
EXT.P8 :	**TRUE COPY OF THE APPEAL DT.15-1-15 FILED BY THE PETITIONER BEFORE R1.**
EXT.P9 :	**TRUE COPY OF THE STAY PETITION DT.15-1-15 FILED BY THE PETITIONER BEFORE R1.**
EXT.P10 :	**TRUE COPY OF THE ORDER DT.11-2-15 PASSED BY R1.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

STK

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.6090 OF 2015 (I)

Dated this the 26th 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 the assessment order for the assessment year 2010-11, petitioner had preferred Ext.P8 appeal before the 1st respondent. Along with the appeal, the petitioner had also preferred Ext.P9 stay petition. The 1st respondent has now passed Ext.P10 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 assessment order.

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.R.Ramadas, 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 Ext.P10 order, 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) Ext.P10 order is 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