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. 6110 of 2015 (K)

PETITIONER :

M/S. BROTHERS TRADERS,
BROTHERS COMPLEX, BYPASS ROAD, KONDOTTY
REP BY PROPRIETOR K UMMER HAJI

BY ADVS.SRI.K.P.ABDUL AZEES
SRI.V.K.SHAMUSUDHEEN
SMT.C.AMRITA
SMT.T.ARCHANA

RESPONDENTS :
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1. ASSISTANT COMMISSIONER
MALAPPURAM-676505

2. THE DEPUTY COMMISSIONER(APPEALS)
COMMERCIAL TAXES, ERNAKULAM-682011

3. THE COMMISSIONER
COMMERCIAL TAXES, THIRUVANANTHAPURAM-695001

R1 TO R3 BY GOVERNMENT PLEADER SRI. SUDHEESH KUMAR

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

bp

WP(C).No. 6110 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:- **THE TRUE COPY OF THE ASSESSMENT ORDER PASSED BY ASSISTANT COMMISSIONER, MALAPPURAM.**

P2:- **TRUE COPY OF THE AUDITED STATEMENT IN FORM 13A FILED BY THE PETITIONER.**

P3:- **THE TRUE COPY OF THE LETTER ISSUED BY THE CHARTERED ACCOUNTANT, P H HAMEED.**

P4:- **THE TRUE COPY OF TRADING PROFIT & LOSS ACCOUNT OF THE PETITIONER**

P5:- **THE TRUE COPY OF APPEAL MEMORANDUM FILED BEFORE DEPUTY COMMISSIONER (APPEALS)ERNAKULAM.**

P6:- **THE TRUE COPY OF STAY APPLICATION FILED BEFORE DEPUTY COMMISSIONER (APPEALS)ERNAKULAM.**

P7:- **THE TRUE COPY OF STAY ORDER PASSED BY DEPUTY COMMISSIONER (APPEALS)ERNAKULAM**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.6110 OF 2015 (K)

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 2009-10, petitioner had preferred Ext.P5 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P6 stay petition. The 2nd respondent has now passed Ext.P7 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 2nd respondent had not exercised his discretion validly while passing the said order.

3. I have heard Sri.K.P.Abdul Azees, 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.P7 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.P7 order is quashed and the 2nd 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 2nd respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp