IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No.6277 of 2015 (H)

PETITIONER:

THARIQUE M.I,AGED 42 YEARS,
PROPRIETOR POPULAR WOOD INDUSTRIES,
SURABHI TOWER,M.C.ROAD,PERUMBAVOOR,
ERNAKULAM DISTRICT.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT:

THE ASSISTANT COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM,ERNAKULAM DISTRICT.

BY GOVT. PLEADER SRI.SUDHEESH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No.6277 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:TRUE COPY OF THE PENALTY ORDER NO.ISM 3/2013-14 DATED 30-11-2013 PASSED BY THE INTELLIGENCE SQUAD.

EXHIBIT P2:TRUE COPY OF THE JUDGMENT IN WPC NO.7602/14 DATED 17-03-2014 OF HIGH COURT OF KERALA.

EXHIBIT P3:TRUE COPY OF THE NOTICE DATED 28-01-2015 ISSUED BY THE DEPUTY COMMISSIONER (APPEALS),MATTANCHERRY FOR THE HEARING OF RP NO.58/14-14.

EXHIBIT P4:TRUE COPY OF THE ASSESSMENT ORDER NO.32151363491/2012-2013 DATED 30-08-2014 PASSED BY COMMERCIAL TAX OFFICER, PERUMBAVOOR.

EXHIBIT P5:TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE RESPONDENT AGAINST THE EXHIBIT P4 ORDER.

EXHIBIT P6:TRUE COPY OF THE STAY PETITIONER FILED ALONG WITH EXHIBIT P5 APPEAL.

EXHIBIT P7:TRUE COPY OF THE ORDER NO.KVATA 3145/2014 DATED 19-01-2015 PASSED BY THE RESPONDENT.

EXHIBIT P8:TRUE COPY OF THE JUDGMENT OF HONOURABLE SUPREME COURT PASSED IN RAVI GUPTA V. COMMISSIONER OF SALES TAX, DELHI, DATED 07-03-2009.

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.6277 of 2015

Dated this the 27th day of February, 2015

J U D G M E N T

Against Ext.P4 assessment order under the Kerala Value Added Tax Act, petitioner preferred Ext.P5 appeal before the respondent. Along with the appeal, the petitioner had also preferred Ext.P6 stay petition. The respondent has now passed Ext.P7 order on the stay petition 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 Ext.P4 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 the respondents.

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.P7 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.7 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns