

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 6799 of 2015 (Y)

PETITIONER :

**M/S. TROPICAL PLANTATIONS LTD.,
TELEGRAPH ROAD, KOTTAYAM,
REPRESENTED BY ITS DIRECTOR MR. P.T. THOMAS.**

**BY ADVS.SRI.RAMESH CHERIAN JOHN
SRI.JOJO ISAAC NEYYARAPALLY**

RESPONDENT(S) :

- 1. THE INSPECTING ASSISTANT COMMISSIONER
OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER
DEPARTMENT OF COMMERCIAL TAXES,
KOTTAYAM, PIN - 686 001.**
- 2. THE DEPUTY COMMISSIONER (APPEALS) II
COMMERCIAL TAXES, KOTTAYAM, PIN - 686 001.**

R1 & R2 BY GOVT. PLEADER SRI. SUDHEESH KUMAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 6799 of 2015 (Y)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1. COPY OF THE NOTICE U/S. 39(5) OF THE ACT DATED 17.11.14.
- EXHIBIT P2. COPY OF THE OBJECTION DATED 4.12.14 FILED BEFORE THE 1ST RESPONDENT.
- EXHIBIT P3. COPY OF THE REVISED NOTICE DATED 6.12.14 ISSUED U/S.39(5) OF THE ACT BY THE 1ST RESPONDENT.
- EXHIBIT P4. COPY OF THE REPLY DATED 16.12.14 FILED BEFORE THE 1ST RESPONDENT.
- EXHIBIT P5. COPY OF THE NOTICE DATED 17.12.14 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P6. COPY OF THE LETTER DATED 22.12.14 FILED BEFORE THE 1ST RESPONDENT.
- EXHIBIT P7. COPY OF THE ORDER OF ASSESSMENT DATED 24.12.14 PASSED U/S. 39 OF THE ACT ALONGWITH NOTICE OF DEMAND.
- EXHIBIT P8. COPY OF THE FORM OF APPEAL AND GROUDNS OF APPEAL FILED BEFORE THE 2ND RESPONDENT.
- EXHIBIT P9. COPY OF THE INTER LOCUTORY APPLICATION ALONGWITH GROUNDS OF APPLICATION FOR STAY.
- EXHIBIT P10. COPY OF THE LETTER DATED 31.1.15 FILED BEFORE THE 2ND RESPONDENT.
- EXHIBIT P11. COPY OF THE ORDER DATED 5.2.15 PASSED BY THE 2ND RESPONDENT GRANTING CONDITIONAL STAY.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.6799 of 2015

.....
Dated this the 4th day of March, 2015

J U D G M E N T

Against Ext.P7 assessment order, petitioner preferred Ext.P8 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P9 stay petition. The 2nd respondent has now passed Ext.P11 order on the stay petition directing the petitioner to pay 40% of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Ext.P7 assessment order.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the respondents had not exercised his discretion validly while passing the said order.

3. Heard Sri.Ramesh Cherian John, 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.P11 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.P11 order is quashed and the 2nd 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 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

