IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 7103 of 2015 (K)

PETITIONER(S):

AKSHAYA JEWELLERS, 10/972,
MELEPALAYAM, KOZHIKODE - 673 001,
REPRESENTED BY ITS MANAGING PARTNER
N. ARUN MALLER.

BY ADVS.SRI.THOMAS ABRAHAM
DR.K.P.PRADEEP

RESPONDENT(S):
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1. **STATE OF KERALA, REPRESENTED BY ITS PRINCIPAL SECRETARY TO TAXES, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**

2. **COMMERCIAL TAX OFFICER, DEPARTMENT OF COMMERCIAL TAXES, 2ND CIRCLRE KOZHIKODE - 673 001.**

3. **ASSISTANT COMMISSIONER (APPEALS), DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE - 673 001.**

4. **SALES TAX OFFICER (RECOVERY), OFFICE OF THE DEPUTY COMMISSIONER, DEPARTMENT OF COMMERCIAL TAXES, KOZHIKODE - 673 006.**

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 7103 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: **TRUE COPY OF THE ASSESSMENT ORDER NO.32110760046/13-14 DATED 31/10/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

EXT.P2: **TRUE COPY OF THE REPLY DATED 27/10/2014 SUBMITTED BY THE PETITIONER TO THE PRE-ASSESSMENT NOTICE ISSUED BY THE 2ND RESPONDENT.**

EXT.P3: **TRUE COPY OF THE APPEAL FILED AGAINST EXT.P1 ASSESSMENT ORDER PENDING BEFORE THE 3RD RESPONDENT.**

EXT.P4: **TRUE COPY OF THE APPLICATION FOR STAY IN EXT P3 APPEAL PENDING BEFORE THE 3RD RESPONDENT.**

EXT.P5: **TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE RR ACT NO.RR 1602/14-15 DATED 08/01/2015 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.**

EXT.P6: **TRUE COPY OF THE ORDER NO.SP.104/15 IN VATA 18/15 DATED 16/02/2015 ISSUED BY THE 3RD RESPONDENT IN EXT.P4 APPLICATION FOR STAY.**

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 7103 of 2015 (K)

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Dated this the 6th day of March, 2015

JUDGMENT

Against Ext.P1 assessment order under the Kerala Value Added Tax Act, 2003, the petitioner has preferred Ext.P3 appeal before the 3rd respondent. Along with the appeal, the petitioner also preferred Ext.P4 stay petition. The 4th respondent has now passed Ext.P5 interim 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.P1 assessment order.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 4th respondent has not exercised his discretion validly while passing the said order.

3. Heard Sri.Thomas Abraham, the learned counsel appearing for petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader appearing for respondents.

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.P5 order, the 4th 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 vs. Commecial 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.P5 order is quashed and the 4th respondent is directed to reconsider the matter and pass fresh orders in the stay petition 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 4th respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/07/03/