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. 7202 of 2015 (A)

PETITIONER :

M/S.MOTOR PLAZA,
N.H.ROAD, SREEKARYAM,
THIRUVANANTHAPURAM
REPRESENTED BY ITS PROPRIETOR
SALIM M. KABEER.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.BENOJ C. AUGUSTIN
SRI.SEBIN THOMAS
SMT.J.KASTHURI
SRI.VISHNU BHUVANENDRAN

RESPONDENT(S) :
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1. **DEPUTY COMMISSIONER (APPEALS)**
   (UNDER KERALA VALUE ADDED TAX ACT AND RULES)
   DEPARTMENT OF COMMERCIAL TAXES
   THIRUVANANTHAPURAM-695 001.

2. **ASSISTANT COMMISSIONER – II (ASSESSMENT)/(ASSESSING AUTHORITY)**
   OFFICE OF ASSISTANT COMMISSIONER, SPECIAL CIRCLE
   DEPARTMENT OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM-695 001.

3. **STATE OF KERALA**
   REPRESENTED BY PRINCIPAL SECRETARY
   DEPARTMENT OF COMMERCIAL TAXES, GOVT.SECRETARIAT
   THIRUVANANTHAPURAM -695 001.

R1 TO R3 BY GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

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

Mn

WP(C).No. 7202 of 2015 (A)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P-1:	**TRUE COPY OF THE PROCEEDINGS OF BEST JUDGEMENT ASSESSMENT OF THE 2ND RESPONDENT DATED 17.11.2014 AGAINST THE PETITIONER FOR THE RETURN YEAR PERIOD 2007 – 08.**
EXT.P-2:	**TRUE COPY OF THE PROCEEDINGS OF BEST JUDGEMENT ASSESSMENT OF THE 2ND RESPONDENT DATED 17.11.2014 AGAINST THE PETITIONER FOR THE RETURN YEAR PERIOD 2008 – 09.**
EXT.P-3:	**TRUE COPY OF THE PROCEEDINGS OF BEST JUDGEMENT ASSESSMENT OF THE 2ND RESPONDENT DATED 17.11.2014 AGAINST THE PETITIONER FOR THE RETURN YEAR PERIOD 2009 – 10.**
EXT.P-4:	**TRUE COPY OF THE ORDER NO.CR.5/09-10 DATED 30.9.2010 OF THE INTELLIGENCE OFFICER, ALLOWING INSTALMENTS FOR THE TAX DUE FOR THE YEARS 2007 - 08, 2008 - 09 AND 2009 – 2010.**
EXT.P-5:	**TRUE COPY OF THE PROCEEDINGS OF BEST JUDGEMENT ASSESSMENT OF THE 2ND RESPONDENT DATED 17.11.2014 AGAINST THE PETITIONER FOR THE RETURN YEAR PERIODS 2007 – 08.**
EXT.P-6:	**TRUE COPY OF THE PROCEEDINGS OF BEST JUDGEMENT ASSESSMENT OF THE 2ND RESPONDENT DATED 17.11.2014 AGAINST THE PETITIONER FOR THE RETURN YEAR PERIODS 2008 – 09.**
EXT.P-7:	**TRUE COPY OF THE PROCEEDINGS OF BEST JUDGEMENT ASSESSMENT OF THE 2ND RESPONDENT DATED 17.11.2014 AGAINST THE PETITIONER FOR THE RETURN YEAR PERIODS 2009 – 10.**
EXT.P-8:	**TRUE COPY OF THE STATUTORY APPEAL DATED 16.1.2015 ALONG WITH STAY PETITIONS AGAINST ASSESSMENTS MADE IN EXHIBITS P5 TO P7 IN RESPECT OF RETURN YEAR PERIOD 2007 – 08.**
EXT.P-9:	**TRUE COPY OF THE STATUTORY APPEAL DATED 16.1.2015 ALONG WITH STAY PETITIONS AGAINST ASSESSMENTS MADE IN EXHIBITS P5 TO P7 IN RESPECT OF RETURN YEAR PERIOD 2008 – 09.**
EXT.P-10:	**TRUE COPY OF PETITION STATUTORY APPEAL DATED 16.1.2015 ALONG WITH STAY PETITIONS AGAINST ASSESSMENTS MADE IN EXHIBITS P5 TO P7 IN RESPECT OF RETURN YEAR PERIODS 2009 – 10.**
EXT.P-11:	**TRUE COPY OF LETTER INTERIM COMMON ORDER DATED 31.1.2005 PASSED IN THE STAY PETITION IN EXHIBITS P8 TO P10.**

RESPONDENT(S)' EXHIBITS :

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.7202 of 2015

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Dated this the 6th day of March, 2015

J U D G M E N T

Against Exts.P5 to P7 assessment orders, petitioner preferred Exts.P8 to P10 appeals before the 1st respondent. Along with the appeals, the petitioner had also preferred stay petitions. The 1st respondent has now passed Ext.P11 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 Exts.P5 to P7 assessment orders.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 1st respondent had not exercised his discretion validly while passing the said order.

3. Heard Sri.Nagaraj Narayanan, the learned counsel for petitioner and Smt.Sobha Annamma Eappen, 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 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.P11 order is quashed and the 1st 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 1st respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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