IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 7313 of 2015 (L)

PETITIONER:

FOOD CORPORATION OF INDIA,
REGIONAL OFFICE, KESAVADASAPURAM,
THIRUVANANTHAPURAM- 695 004,
REPRESENTED BY ITS AREA MANAGER,
FOOD CORPORATION OF INDIA, DISTRICT OFFICE,
ERNAKULAM, KOCHI - 682 011,
AUGUSTINE CLINTON OLIVERO.

BY.SRI.P.JACOB VARGHESE (SENIOR ADVOCATE)
ADV. SRI.VARGHESE M.EASO, SC

RESPONDENT(S):
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1. **ASSISTANT COMMISSIONER, SPECIAL CIRCLE,**
   COMMERCIAL TAXES, TAX TOWERS,
   KARAMANA, THIRUVANANTHAPURAM, PIN - 695 002.

2. **DEPUTY COMMISSIONER (APPEALS)**
   COMMERCIAL TAXES,
   THIRUVANANTHAPURAM, PIN - 695 002,
   THIRUVANANTHAPURAM.

3. **COMMERCIAL TAX INSPECTOR,**
   OFFICE OF INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, THIRUVANANTHAPURAM - 695 002.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 7313 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT-P1- TRUE COPY OF THE ANNUAL RETURN OF THE PETITIONER DATED 05/11/2013 FOR 2012-13.

EXHIBIT-P2- TRUE COPY OF THE RELEVANT PORTION OF FORM 13 A.

EXHIBIT-P3- TRUE COPY OF THE NOTICE DATED 07/10/2014 ISSUED BY THE IST RESPONDENT.

EXHIBIT-P4- TRUE COPY OF THE OBJECTION DATED 19/11/2014 FILED BY THE PETITIONER.

EXHIBIT-P5- TRUE COPY OF THE NOTICE NO. 32010157214/2012-13 DATED 19/11/2014 ISSUED BY THE IST RESPONDENT TO THE PETITIONER.

EXHIBIT-P6- TRUE COPY OF THE REPLY NO. FIN/19(2)/2013-14 DATED 10/12/2014 BY THE PETITIONER TO THE IST RESPONDENT.

EXHIBIT-P7- TRUE COPY OF THE ORDER DATED 15/12/2014 BY THE IST RESPONDENT.

EXHIBIT-P8- TRUE COPY OF THE FORM NO. 12 DEMAND NOTICE DATED 18/12/2014 FOR RS.46.75,870/- BY THE IST RESPONDENT TO THE PETITIONER.

EXHIBIT-P9- TRUE COPY OF THE APPEAL MEMORANDUM 17/01/2014 ALONG WITH STAY PETITION FILED BEFORE THE 2ND RESPONDENT.

EXHIBIT-P10- TRUE COPY OF THE DEMAND NOTICE NO. A3-142/15-15 DATED 24/01/2015 OF THE 3RD RESPONDENT.

EXHIBIT-P11- TRUE COPY OF THE ORDER NO. KVATA 509/2014 DATED 02/12/2015 IN STAY PETITION BY THE 2ND RESPONDENT.

EXHIBIT-P12- TRUE COPY OF THE STOCK LEDGER SUMMARY AS ON 31/02/2013 AUDITED BY THE REGIONAL AUDIT OFFICE.

EXHIBIT-P13- TRUE COPY OF THE CERTIFICATE ISSUED BY THE ASSISTANT GENERAL MANAGER (F&A) FCI REGIONAL OFFICE, BANGALORE.

EXHIBIT-P14- THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE DEPUTY GENERAL MANAGER (ACCOUNTS) OF TAMIL NADU REGION OF THE PETITIONER CORPORATION.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7313 OF 2015 (L)

Dated this the 9th day of March, 2015

J U D G M E N T

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Ext.P7 assessment order for the assessment year 2012-13, the petitioner had preferred Ext.P9 appeal along with a stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P11 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 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 2nd respondent had not exercised his discretion validly while passing the said order.

3. I have heard the learned counsel appearing for the petitioner as also 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.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 filed by the petitioner, within two months 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