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.7353 of 2015 (T)

PETITIONER:

C.I.MOHAN,MANAGING PARTNER,
M/S.NOVALTY LADIES STORES,ERNAKULAM.

BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANY

RESPONDENTS:
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1. COMMERCIAL TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES,
2ND CIRCLE,ERNAKULAM-682027.

2. THE ASSISTANT COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES,
COMMERCIAL TAX COMPLEX,ERNAKULAM-682027.

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:

pk

WP(C).No.7353 of 2015 (T)

<u>APPENDIX</u>

PETITIONER'S EXHIBITS:

EXHIBIT P1:TRUE COPY OF THE PRE ASSESSMENT NOTICE DATED 28.11.2014 ISSUED BY THE IST RESPONDENT.

EXHIBIT P2:TRUE COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE IST RESPONDENT.

EXHIBIT P3:TRUE COPY OF THE HARD COPY OF THE MONTHLY RETURN IN FORM 10 SUBMITTED IN KVATIS FOR THE MONTH OF AUGUST 2010 IN THE DEALERS LOGING OF THE PETITIONER.

EXHIBIT P4:TRUE COPY OF THE HARD COPY OF THE MONTHLY RETURN IN FORM 10 SUBMITTED KVATIS FOR THE MONTH OF AUGUST 2010 IN THE DEALERS LOGIN OF M/S FRIENDS LIGHT HOUSE, ERNAKULAM.

EXHIBIT P5:TRUE COPY OF THE ASSESSMENT ORDER OF THE IST RESPONDENT DATED 7.1.2015.

EXHIBIT P6:TRUE COPY OF THE APPEAL PETITION FILED BEFORE THE 2ND RESPONDENT.

EXHIBIT P7:TRUE COPY OF THE PETITION FOR OUT OF TURN HEARING DATED 19.2.2015.

EXHIBIT P8:TRUE COPY OF THE STAY PETITION DATED 19.2.2015.

EXHIBIT P9:TRUE COPY OF THE STAY ORDER DATED 26.2.2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No. 7353 of 2015 (T)

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Dated this the 9th day of March, 2015

JUDGMENT

Against Ext.P5 assessment order under the Kerala Value Added Tax Rules, 2005, the petitioner has preferred Ext.P6 appeal before the 2nd respondent. Along with the appeal, the petitioner also preferred Ext.P8 stay petition. The 2nd respondent has now passed Ext.P9 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 2nd respondent has not exercised his discretion validly while passing the said order.

3. Heard Sri.P.S.Soman Pulladan, 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.P9 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 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.P9 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 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 2nd respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/09/03/