IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 7570 of 2015 (U)
----------------------------

PETITIONER:
-------------------

VARGHESE THOMAS, AGED 68 YEARS,
S/O.VARKEY VARGHESE,
KUNNAYATHU BUNGALOW, CHERAVALLY,
KAYAMKULAM, PIN-690 502.

BY ADVS.SRI.P.A.ABDUL JABBAR
SRI.H.ABDUL LATHIEF

RESPONDENT(S):
--------------------------

1. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, CHENGANNUR, PIN - 689 121.

2. DY.COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOLLAM, PIN - 691 002.

3. COMMERCIAL TAX OFFICER,
COMMERCIAL TAX OFFICE, KAYAMKULAM,
ALAPPUZHA, PIN-690 502.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

**WP(C).No. 7570 of 2015 (U)**
**------------------------------------**

## APPENDIX

**PETITIONER(S)' EXHIBITS:**
**------------------------------------**

**EXT P1 :** **TRUE COPY OF THE ASSESSMENT ORDER NO.32040929744/2012-13 ISSUED BY THE 3RD RESPONDENT.**

**EXT P2 :** **TRUE COPY OF THE INTERIM ORDER PASSED IN APPEAL NO.KVATA(ALPY) 648/2014 BY THE 2ND RESPONDENT.**

**EXT P3 :** **TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT.**

**EXT P4 :** **TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**

**RESPONDENT(S)' EXHIBITS: - NIL**
**--------------------------------------**

**/TRUE COPY/**

**P.S. TO JUDGE**

**mbr/**

**A.K.JAYASANKARAN NAMBIAR, J.**

**-------------------------------**

**W.P.(C).NO.7570 OF 2015 (U)**

**-----------------------------------**

**Dated this the 10th 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.P1 assessment order for the assessment year 2012-13, petitioner had preferred an appeal along with a stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P2 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.P1 assessment order, and as per Ext.P3 order, the time limit prescribed in Ext.P2 order was also further extended.

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.P2 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.P2 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