IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 7795 of 2015 (Y)

PETITIONER

SIM JOHNSON
M/S. PRINCE AGENCIES,
V.H. ROAD, PALAKKAD.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER
2ND CIRCLE,
PALAKKAD -678001.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
TAX TOWERS,
KARAMANA,
THIRUVANANTHAPURAM - 695 001.

R1 AND R2 BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vmr.

WP(C).No. 7795 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE ORDER ISSUED BY THE IST RESPONDENT DATED 26/09/2009.

EXHIBIT-P1(A)-TRUE COPY OF THE ORDER ISSUED BY THE IST RESPONDENT DATED 26/09/2009.

EXHIBIT-P2-TRUE COPY OF THE ORDER ISSUED BY THE DEPUTY COMMISSIONER, PALAKKAD DATED 29/09/2014.

EXHIBIT-P2(A)-TRUE COPY OF THE ORDER ISSUED BY THE DEPUTY COMMISSIOONER, PALAKKAD.

EXHIBIT-P3-TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT-P3(A)-TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 29/10/2014.

EXHIBIT-P4-TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT-P4(A)-TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT-P5-TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 03/02/2015.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

vmr

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 7795 of 2015 (Y)

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Dated this the 12th day of March, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Exts.P1 and P1(a) penalty orders, the petitioner has preferred Exts.P3 and P3(a) revision petitions before the 2nd respondent. Along with the revision petitions, the petitioner also preferred Exts.P4 and P4(a) stay petitions. The 2nd 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 and P1(a) penalty orders.

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.Harisankar V. Menon, 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 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.P5 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/13/03/