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. 7806 of 2015 (A)

PETITIONER :

C.S PRAKASH,
PROPRIETOR, SAI ENGINEERS & CONTRACTORS, XII/3447,
NEAR K.S.R.T.C., CHALAKKUDY, THRISSUR DISTRICT,
PIN - 680 307.

BY ADV. SRI.MOHAMMED RAFIQ

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER (WC),
MATTANCHERRY, ERNAKULAM, PIN - 682 002.

2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM, PIN - 682 015.

3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, IRINJALAKKUDA, THRISSUR DISTRICT
PIN - 680 121.

4. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN -695 001.

R1 TO R4 BY SR 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:

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WP(C).No. 7806 of 2015 (A)
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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: THE TRUE COPY OF THE ASSESSMENT ORDER NO.32151093704/2008 - 09 DATED 23.12.2013 PASSED BY THE IST RESPONDENT UNDER SECTION 25(1) OF THE KERALA VALUE ADDED TAX ACT, 2003.

EXT.P-2: THE TRUE COPY OF THE APPEAL DATED 11.2.2014 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT

EXT.P-3: THE TRUE COPY THE STAY PETITION DATED 11.2.2014 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT

EXT.P-4: THE TRUE COPY OF THE DEMAND NOTICE NO.A2-503/2014 DATED 6.3.2014 ISSUED BY THE RESPONDENT UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT,1968.

EXT.P-5: THE TRUE COPY OF THE ORDER NO.KVAT 463/14 DATED 20.10.2014 PASSED BY THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.7806 of 2015 (A)

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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 Ext.P1 assessment order, the petitioner has preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner also preferred Ext.P3 stay petition. 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 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.Mohammed Rafiq, 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/