IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No. 8075 of 2015 (H)

PETITIONER(S):

K.P.PADMA KUMAR,
HOTEL KOMALA, ZILLA COURT WARD,
ALAPPUZHA.

BY ADVS.SRI.JOHNSON GOMEZ
SRI.S.BIJU (KIZHAKKANELA).

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2. THE DEPUTY COMMISSIONER (APPEALS)-II,
COMMERCIAL TAXES, KOLLAM - 691 002.

3. ASSISTANT COMMISSIONR (ASSESSMENT),
SPECIAL CIRCLE, ALAPPUZHA - 688 001.

4. THE INTELLIGENCE OFFICER,
SQUAD II, COMMERCIAL TAXES, ALAPPUZHA - 688 001.

5. THE TAHSILDAR (RR),
AMBALAPUZHA TALUK, ALAPPUZHA, PIN 688 561.

BY SENIOR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: **A TRUE COPY OF THE NOTICE UNDER SECTION 45A OF THE KGST ACT NO. CR NO. 21/12-13 DATED 25/03/2014 ISSUED BY THE FORTH RESPONDENT TO THE PETITIONER.**

EXT.P2: **A TRUE COPY OF THE REPLY DATED 26/05/2014 SUBMITTED BY THE PETITIONER TO THE FOURTH RESPONDENT.**

EXT.P3: **A TRUE COPY OF THE ORDER NO. CR-21/2012-13 DATED 10/07/2014 UNDER SECTION 45A OF THE KGST ACT ISSUED BY THE FOURTH RESPONDENT.**

EXT.P4: **A TRUE COPY OF THE APPEAL AGAINST THE PENALTY ORDER ALONG WITH STAY PETITION FILED BEFORE THE DEPUTY COMMISSIONER (APPEALS), KOLLAM.**

EXT.P5: **A TRUE COPY OF THE JUDGMENT DATED 18TH NOVEMBER 2014 IN WPC.NO. 30625 OF 2014 PASSED BY THIS HON'BLE COURT.**

EXT.P6: **A TRUE COPY OF THE NOTICE NO. 13200541/2013-2014 DATED 31/10/2014 ISSUED UNDER SECTION 17(3) OF THE KGST ACT BY THE THIRD RESPONDENT.**

EXT.P7: **A TRUE COPY OF THE REPLY DATED 28/11/2014 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.**

EXT.P8: **A TRUE COPY OF THE ORDER NO. 13200541/2012 - 2013 DATED 29/11/2014 ISSUED BY THE THIRD RESPONDENT.**

EXT.P9: **A TRUE COPY OF THE DEMAND NO. 55/2014-15 DATED 29/011/2014 FOR THE BALANCE AMOUNT OF RS. 29,60,464/- ISSUED BY THE THIRD RESPONDENT.**

EXT.P10: **A TRUE COPY OF THE APPEAL DATED 29TH DECEMBER 2014 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P11: **A TRUE COPY OF THE STAY PETITION DATED 29TH DECEMBER 2014 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.**

EXT.P12: **A TRUE COPY OF THE ORDER DATED 28/02/2015 IN STA (ALPY) NO. 660/2014 PASSED BY THE SECOND RESPONDENT.**

EXT.P13: A TRUE COPY OF THE NOTICE NO. B4-560/2014 DATED 26/02/2015 ISSUED BY THE FIFTH RESPONDENT.

EXT.P14: A TRUE COPY OF THE JUDGMENT DATED 13/02/2015 IN WPC.NO. 4664 OF 2015 PASSED BY THIS HON'BLE COURT.

EXT.P15: A TRUE COPY OF THE ASSESSMENT ORDER NO. 13200541/10-11 PASSED BY THE AGRL. INCOME TAX & COMMERCIAL TAX OFFICER, ALAPPUZHA.

EXT.P16: A TRUE COPY OF THE ASSESSMENT ORDER NO. 13200541/10-11 PASSED BY THE AGRL. INCOME TAX & COMMERCIAL TAX OFFICER, ALAPPUZHA.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 8075 of 2015

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Dated this the 13th day of March, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Ext.P8 assessment order for the assessment year 2012-2013, the petitioner had preferred Ext.P10 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P11 stay petition. The 2nd respondent has now passed Ext.P12 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 the assessment order.

2. In the writ petition, the petitioner impugns the said conditional orders 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 Sri.Johnson Gomez, the learned counsel appearing for the petitioner as also Sri.Sobha Annamma Eappen, the learned Government Pleader appearing for the respondents.

4. 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.P12 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.P12 order is quashed and the 2nd respondent is directed to reconsider the matter and pass fresh orders in the stay petitions 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

das