IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 8194 of 2015 (Y)

PETITIONER(S):

M M BADAR,MANAPPATTU HARDWARES,
VANNAPPURAM, THODUPUZHA, PIN-685 607
IDUKKI DISTRICT.

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   SECOND CIRCLE, DEPARTMENT OF COMMERCIAL TAXES
   THODUPUZHA, PIN-685 584.

2. **THE DEPUTY COMMISSIONER (APPEALS),**
   DEPARTMENT OF COMMERCIAL TAXES, KOTTAYAM
   PIN-686 002.

3. **THE INSPECTING ASSISTANT COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES, IDUKKI AT KATTAPPANA
   PIN-685 508.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 8194 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1 : TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR 2011-2012, DATED 21-11-2014.

EXT P2 : TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT, DATED 05-12-2014.

EXT P3 : TRUE COPY OF THE STAY ORDER PASSED BY THE 2ND RESPONDENT DATED 07-02-2015.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.8194 OF 2015 (Y)

Dated this the 17th 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, the petitioner had preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred a stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P3 order on the stay petition directing the petitioner to pay 45% 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 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 counsel 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.P3 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.P3 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