IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 8696 of 2015 (J)

PETITIONER:

M/S.ROTANA INNS PVT. LTD,
(HOTEL RAJ RESIDENCY),
KALLUVATHUKKAL, KOLLAM, PIN-691578,
REPRESENTED BY ITS MANAGING DIRECTOR-
D.THYAGARAJAN.

BY ADV. SRI.P.G.JAYASHANKAR

RESPONDENT(S):
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1. **STATE OF KERALA,**
   REPRESENTED BY ITS SECRETARY,
   TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
   TRIVANDRUM-695001.

2. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   TAX TOWERS, THIRUVANANTHAPURAM, PIN-695002.

3. **THE ASSISTANT COMMISSIONER, COMMERCIAL TAXES,**
   SPECIAL CIRCLE, ASRAMAM, KOLLAM, PIN-691002.

4. **THE DEPUTY TAHSILDAR (REVENUE RECOVERY),**
   TALUK OFFICE, KOLLAM, PIN - 691 001.

5. **THE DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, ASRAMOM, KOLLAM, PIN-691002.

6. **KERALA AGRICULTURAL INCOME TAX AND**
   SALES TAX APPELLATE TRIBUNAL,
   ADDITIONAL BENCH, THIRUVANANTHAPURAM-695010,
   REPRESENTED BY ITS ASSISTANT SECRETARY.

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 8696 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1 : TRUE COPY OF THE SHOP INSPECTION REPORT NO.219119 DATED 25-8-2009.

EXT.P2 : TRUE COPY OF THE SHOP INSPECTION REPORT NO.219120 DATED 25-8-2009.

EXT.P3 : TRUE COPY OF THE STATEMENT OF PHYSICAL STOCK DATED 25-8-2009 RELATING TO EXT.P1.

EXT.P4 : TRUE COPY OF THE STATEMENT OF PHYSICAL STOCK DATED 25-8-2009 RELATING TO EXT.P2.

EXT.P5 : TRUE COPY OF THE PENALTY NOTICE DATED 25-5-2010.

EXT.P6 : TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE PETITIONER.

EXT.P7 : TRUE COPY OF THE PENALTY ORDER DATED 23-7-2010.

EXT.P8 : TRUE COPY OF THE APPEAL MEMORANDA IN STA 767/2010.

EXT.P9 : TRUE COPY OF THE ORDER DATED 28-12-2010 IN STA 767/2010.

EXT.P10 : TRUE COPY OF THE RECTIFICATION APPLICATION.

EXT.P11 : TRUE COPY OF THE ORDER DATED 11-11-2013.

EXT.P12 : TRUE COPY OF THE APPEAL MEMORANDA BEFORE THE 6TH RESPONDENT.

EXT.P13 : TRUE COPY OF THE STAY PETITION.

EXT.P14 : TRUE COPY OF THE EARLY HEARING PETITION.

EXT.P15 : TRUE COPY OF THE REVENUE RECOVERY NOTICE IN FORM 1.

EXT.P16 : TRUE COPY OF THE NOTICE DATED 23-7-2010.

EXT.P17 : TRUE COPY OF THE ORDER IN TA IA/2011 DATED 13-9-2013.

EXT.P18 : TRUE COPY OF THE ORDER IN INT.P NO.52/2014 IN TA 49/14 DATED 18-12-2014.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.8696 OF 2015 (J)

Dated this the 19th day of March, 2015

<u>J U D G M E N T</u>

The petitioner is an assessee under the Kerala General Sales Tax Act, 1963. Against Ext.P11 assessment order, petitioner had preferred Ext.P12 appeal and Ext.P13 stay petition before the 6th respondent. The 6th respondent has now passed Ext.P18 order on the stay petition directing the petitioner to pay 50% 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 6th 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.P18 order, the 6th 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.P18 order is quashed and the 6th 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 6th respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp