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. 8775 of 2015 (V)

PETITIONER(S):
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1. LAKSHADWEEP PUBLIC WORKS DEPARTMENT,
   REPRESENTED BY THE SUPERINTENDING ENGINEER,
   LPWD UT OF LAKSHADWEEP, KAVARATTI.

2. THE ASSISTANT ENGINEER,
   LAKSHADWEEP PWD, SUB DIVISION BEYPORE,
   KERALA.

BY ADV. SRI.S.RADHAKRISHNAN, SC.

RESPONDENT(S):
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1. COMMISSIONER OF SALES TAX,
   STATE OF KERALA, THIRUVANANTHAPURAM- 695 101.

2. THE DEPUTY COMMISSIONER (APPEALS),
   KOZHIKODE- 673 006.

3. THE COMMERCIAL TAX OFFICER,
   IVTH CIRCLE, KOZHIKODE -673 020.

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:

rs.

WP(C).No. 8775 of 2015 (V)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1: A TRUE COPY OF THE COMMON ORDER NO.SP 134/15 IN VAT APPEALS 301/2015,302/2015 &303/2015 DATED 25.02.2015.

EXHIBIT P2: A TRUE COPY OF THE ABOVE SAID LETTER DATED 11.06.2014.

EXHIBIT P3: A TRUE COPY OF THE LETTER F.NO.2/16/2014-AB2/760 DATED 21.07.2004 ISSUED BY THE 1ST PETITIONER TO BARRIA EXPORTS, RAMALLORE, KOZHIKODE.

EXHIBIT P4: A TRUE COPY OF ORIGINAL TAX INVOICE NO. WB 361408304450809.

EXHIBIT P5: A TRUE COPY OF THE LETTER NO.P4-108/15 DATED 09.02.2015 ISSUED BY THE SENIOR PORT OFFICER, BEYPORE TO THE 2ND PETITIONER CERTIFYING THE ABOVE SAID FACTS.

EXHIBIT P6: A TRUE COPY OF THE NOTICE NO. A 3997/2014 DATED 19.09.2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P7: A TRUE COPY OF THE REPLY F.NO. 1/4/CEMENT/2012/AE(SDK)/309 DATED 30.09.2014.

EXHIBIT P8: A TRUE COPY OF THE ORDER NO. 3997/2014 DATED 17.12.2014.

EXHIBIT P9: A TRUE COPY OF THE VAT APPEAL NO.303 OF 2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.8775 of 2015 (V)

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Dated this the 19th day of March, 2015

JUDGMENT

The petitioners are assessees under the Kerala Value Added Tax Act, 2003. Against Ext.P8 assessment order, the petitioners have preferred Ext.P9 appeal before the 2nd respondent. The petitioner is aggrieved by Ext.P1 interim order, passed in 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 petitioners for the year 2014 - 2015.

2. In the writ petition, the petitioners impugn 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.S.Radhakrishnan, the learned counsel appearing for petitioners 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.P1 order, the 2nd respondent does not state reasons as to why the petitioners were required to deposit the amounts as a condition for the grant of stay. This Court has held in **<u>Archana Agencies vs. Commecial Tax Officer</u>** (2014 (2) KLT 715) that an authority considering a stay petition is bound to give reasons even while granting conditional stay.

(ii) Ext.P1 order is quashed and the 2nd respondent is directed to reconsider the matter and pass fresh orders in the stay petition filed by the petitioners, within one month from the date of receipt of a copy of this judgment after affording an opportunity of hearing to the petitioners.

(iii) Recovery steps, if any, initiated against the petitioners shall be kept in abeyance till such time, as fresh orders are passed by the 2nd respondent, as directed above, and communicated to the petitioners.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/20/03/