IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 8966 of 2015 (U)

PETITIONER(S) :

NAZAR AZAD, AGED 56 YEARS,
S/O. LATE M.P.AZAD, PROPRIETOR, AZAD RESTAURANT,
AZAD HOUSE, VAZHUTHACAUD, THIRUVANANTHAPURAM.

BY ADVS.SRI.P.A.MOHAMMED SHAH
SRI.SOORAJ T.ELENJICKAL
SMT.P.M.MAZNA MANSOOR

RESPONDENT(S) :
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1. **THE DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, THRIUVANANTHAPURAM- 695 001.

2. **COMMERCIAL TAX OFFICER,**
   OFFICE OF COMMERCIAL TAX OFFICER, 2ND CIRCLE,
   TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM, PIN- 695 001.

3. **COMMISSIONER OF COMMERCIAL TAXES,**
   OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM, PIN- 695 001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 8966 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **THE TRUE COPY OF THE ASSESSMENT ORDER DATED 20.01.2014 ISSUED BY THE 2ND RESPONDENT.**

EXHIBIT P2: **THE TRUE COPY OF THE DEMAND NOTICE DATED 20.01.2014.**

EXHIBIT P3: **THE TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED NIL.**

EXHIBIT P4: **THE TRUE COPY OF THE ASSESSMENT ORDER DATED 26.02.2013 ISSUED BY THE 2ND RESPONDENT.**

EXHIBIT P5: **A TRUE COPY OF THE NOTICE OF DEMAND DATED 25.02.2013.**

EXHIBIT P6: **A TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 2010-2011 DATED 20.01.2014.**

EXHIBIT P7: **THE TRUE COPY OF THE NOTICE OF DEMAND DATED 20.01.2014.**

EXHIBIT P8: **THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 29.01.2014.**

EXHIBIT P9: **THE TRUE COPY OF THE STAY ORDER PASSED BY THE 1ST RESPONDENT DATED 24.01.2015 WHICH WAS ISSUED ON 03.02.2015.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No. 8966 of 2015 (U)

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Dated this the 20th day of March, 2015

JUDGMENT

Against Exts.P1, P4 and P6 assessment orders under the Kerala Value Added Tax Act, 2003, for the assessment year 2009 - 2010 and 2010 - 2011 respectively, the petitioner has preferred appeals before the 1st respondent. The 1st respondent has now passed Ext.P9 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 Exts.P1, P4 and P6 assessment orders.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 1st respondent has not exercised his discretion validly while passing the said order.

3. Heard Sri.P.A.Mohammed Shah, 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.P9 order, the 1st 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.P9 order is quashed and the 1st 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 1st respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/21/03/