IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 9227 of 2015 (C)

PETITIONER:

SKY GOLD,
PERUMBA,
PAYYANNUR,
REPRESENTED BY ITS MANAGING DIRECTOR S.ASHRAF.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENT(S):
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1. **COMMERCIAL TAX OFFICER,**
   PAYYANNUR, KANNUR DISTRICT -670001.

2. **THE ASSISTANT COMMISSIONER (APPEALS).**
   COMMERCIAL TAXES,
   NIRMAL ARCADE,
   ERANHIPPALAM, KOZHIKODE -673006.

3. **THE INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, KANNUR -670001.

R1 TO R3 BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vmr.

WP(C).No. 9227 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- COPY OF ORDER DATED 17/02/2014 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2011-2012.

EXHIBIT P2- COPY OF ORDER DATED 25/08/2014 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2012-2013.

EXHIBIT P2(a)- COPY OF ORDER DATED 25/08/2014 ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2013-2014.

EXHIBIT P3- COPY OF APPEAL MEMORANDUM AGAINST EXHIBIT P2.

EXHIBIT P3(a)- COPY OF APPEAL MEMORANDUM AGAINST EXHIBIT P2(a)

EXHIBIT P4 - COPY OF STAY PETITION FILED IN EXT. P3 APPEAL.

EXHIBIT P4(a)- COPY OF STAY PETITION FILED IN EXT.P3 (a) APPEAL.

EXHIBIT P5 - COPY OF ORDER DATED 25.02.2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P6- COPY OF NOTICE 01/12/2014 ISSUED BY THE 3RD RESPONDENT UNDER THE RR ACT FOR THE YEAR 2012-2013.

EXHIBIT P6 (a)- COPY OF NOTICE DATED 01/12/2014 ISSUED BY THE 3RD RESPONDENT UNDER THE RR ACT FOR THE YEAR 2013-2013.

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

vmr

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.9227 OF 2015 (C)

Dated this the 23rd 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 on the files of the 1st respondent. Against Exts.P2 and P2(a) assessment orders, the petitioner preferred Exts.P3 and P3(a) appeals before the 2nd respondent. Along with the appeals, the petitioner had also preferred Exts.P4 and P4(a) stay petitions before the 2nd respondent. The 2nd respondent has now passed Ext.P5 order on the stay petitions 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.P2 and P2(a) assessment orders.

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 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.P5 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.P5 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp