

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 9273 of 2015 (H)

PETITIONER(S):

**M/S.JEWEL HOMES PRIVATE LIMITED,
CASAGRANTE BUILDING, 2ND FLOOR,
OPP.TVS SHOW ROOM, DESHABHIMANI JUNCTION,
KALOOR, KOCHI-682 017, REPRESENTED BY ITS
MANAGING DIRECTOR P.A JIHAS.**

BY ADV. SRI.K.J.ABRAHAM.

RESPONDENT(S):

- 1. THE INTELLIGENCE OFFICER (IB),
O/O. THE DEPUTY COMMISSIONER (INT.),
COMMERCIAL TAXES, ERNAKULAM AT EDAPPALLY-682 025.**
- 2. THE DEPUTY COMMISSIONER,
O/O. THE DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM-682 015.**
- 3. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY FINANCE,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM-695 001.**

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE PENALTY ODER NO.IBE-III/OR-15/14-15
DATED 28/10/2014 FOR THE YEAR 2010-11.
- EXT.P1A COPY OF THE PENALTY ORDER NO.IBE-III/OR-16/14-15
DATED 28/10/2014 FOR THE YEAR 2011-12.
- EXT.P1B COPY OF THE PENALTY ORDER NO.IBE-III/OR-17/14-15
DATED 28/10/2014 FOR THE YEAR 2012-13.
- EXT.P2 COPY OF THE APPEAL MEMORANDUM IN FORM NO.29
DATED 24/11/2014 FOR THE YEAR 2010-11.
- EXT.P2A COPY OF THE APPEAL MEMORANDUM IN FORM NO.29
DATED 24/11/2014 FOR THE YEAR 2011-12.
- EXT.P2B COPY OF THE APPEAL MEMORANDUM IN FORM NO.29
DATED 24/11/2014 FOR THE YEAR 2012-13.
- EXT.P3 COPY OF THE FORM NO.30 STAY PETITION DATED 24/11/2014
FOR THE YEAR 2010-11.
- EXT.P3A COPY OF THE FORM NO.30 STAY PETITION DATED 24/11/2014
FOR THE YEAR 2011-12.
- EXT.P3B COPY OF THE FORM NO.30 STAY PETITION DATED 24/11/2014
FOR THE YEAR 2012-13.
- EXT.P4 COPY OF THE ORDER IN WP(C).NO.34500/2014 DATED 19/12/2014.
- EXT.P5 COPY OF THE AGREEMENTS EXECUTED BY THE PETITIONER
TO MR.NIRMAL SARVOTHOM RAO DATED 12/07/2012.
- EXT.P6 COPY OF THE CONSTRUCTION AGREEMENT WITH
DR.MOLY VARGHESE AND P.T. JOHNSON DATED 10/05/2010.
- EXT.P7 COPY OF THE STATEMENT FOR CONSTRUCTION DETAILS
FOR THE YEAR 2010-11, 2011-12 AND 2012-13.
- EXT.P8 COPY OF THE COMMON PENALTY ORDER NO.R.P.662/2014,
663/2014 AND 664/2014 DATED 06/03/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 9273 of 2015

Dated this the 24th day of March, 2015

JUDGMENT

The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003. Against Exts.P1, P1(a), P1(b) penalty orders, the petitioner had preferred Exts.P2, P2(a), P2(b) appeals before the 2nd respondent. Along with the appeals, the petitioner had also preferred Exts.P3, P3(a), P3(b) stay petitions. The 2nd respondent has now passed Ext.P8 order 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 the penalty orders.

2. In the writ petition, the petitioner impugns the said conditional orders 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.

4. 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.P8 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.P8 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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE