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. 9357 of 2015 (T)

PETITIONER(S) :

H.MUSTHAFA, AGED 46 YEARS,
A TO Z SUPERMARKET, OLAVACODE,
PALAKKAD.

BY ADV. SRI.JOSE JOSEPH

RESPONDENT(S) :
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1. **THE COMMERCIAL TAX OFFICER,**
   SECOND CIRCLE, PALAKKAD- 678 001.

2. **ASST. COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, PALAKKAD- 678 001.

BY GOVERNMENT 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:

Msd.

WP(C).No. 9357 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF NOTICE U/S 25(1) OF THE KVAT ACT FOR THE YEAR 2012-13 DATED 15.10.2014.

EXHIBIT P2: TRUE COPY OF PETITIONER'S REPLY OF EXT.P1 DATED 10.11.2014.

EXHIBIT P3: TRUE COPY OF REVISED NOTICE U/S 25(1) OF THE KVAT ACT DATED 14.11.2014.

EXHIBIT P4: TRUE COPY OF PETITIONER'S OBJECTION OF EXT.P3 NOTICE DATED 19.11.2014.

EXHIBIT P5: TRUE COPY OF REVISED NOTICE U/S 25(1) OF THE KVAT ACT DATED 28.11.2014.

EXHIBIT P6: TRUE COPY OF PETITIONER'S OBJECTION OF EXT.P5 NOTICE DATED 08.12.2014.

EXHIBIT P7: TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2012-13 DATED 19.12.2014.

EXHIBIT P7(A): TRUE COPY OF THE DEMAND NOTICE DATED 30.12.2014.

EXHIBIT P8: TRUE COPY OF THE APPEAL AGAINST EXT.P7 ORDER DATED 14.01.2015.

EXHIBIT P9: TRUE COPY OF THE STAY PETITION DATED 14.01.2015.

EXHIBIT P10: TRUE COPY OF THE PETITION FOR EARLY HEARING OF THE APPEAL DATED 14.01.2015.

EXHIBIT P11: TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.4019/2015 DATED 09.02.2015.

EXHIBIT P12: TRUE COPY OF ORDER OF THE 2ND RESPONDENT IN I.A.NO.41/15 IN KVATA 55/15 DATED 25.02.2015.

RESPONDENT(S)' EXHIBITS
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NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.9357 OF 2015 (T)

Dated this the 24th 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 Ext.P7 assessment order, petitioner had preferred Ext.P8 appeal and P9 stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P12 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 Ext.P7 assessment order.

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 counsel 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.P12 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.P12 order is quashed and the 2nd 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 2nd respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp