IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

WP(C).No. 9684 of 2015 (I)

PETITIONER:

M/S.NEHA AGENCIES,
10/861, PARAPPANPOYIL POST,
THAMARASSERY, CALICUT - 673 573.
REPRESENTED BY ITS MANAGING PARTNER
MUHAMMED C.K.

BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA

RESPONDENT(S):
----

1. COMMERCIAL TAX OFFICER,
   4TH CIRCLE, KOZHIKODE 673 001.

2. DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, KOZHIKODE 673 001.

3. SALES TAX OFFICER (RECOVERY),
   OFFICE OF THE DEPUTY COMMISSIONER,
   COMMERCIAL TAXES, KOZHIKODE - 673 001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE ASSESSMENT ORDER FOR THE AY-2009-2010 DATED 30.06.2014.

EXT. P1(A): TRUE COPY OF THE ASSESSMENT ORDER FOR THE AY-2010-2011 DATED 31.7.2014.

EXT. P1(B): TRUE COPY OF THE ASSESSMENT ORDER FOR THE AY-2011-2012 DATED 20.09.2014.

EXT. P1(C): TRUE COPY OF THE ASSESSMENT ORDER FOR THE AY 2012-2013 DATED 20.09.2014.

EXHIBIT P2: TRUE COPY OF THE COVERING LETTER OF N.V CHETTIAR, KOZHIKODE DATED 5.1.2015.

EXT. P2(A): TRUE COPY OF THE COVERING LETTER OF N.V CHETTIAR, KOZHIKODE DATED 5.1.2015.

EXT. P2(B): TRUE COPY OF THE COVERING LETTER OF ANCHERY DISTRIBUTORS DATED 1.1.2015.

EXT. P2(C): TRUE COPY OF THE COVERING LETTER OF 3F INDUSTRIES LTD DATED 27.1.2015.

EXT. P2(D): TRUE COPY OF THE COVERING LETTER OF ANCHERY DISTRIBUTORS DATED 17.12.2014.

EXT. P2(E): TRUE COPY OF THE COVERING LETTER OF ANCHERY DISTRIBUTORS DATED 17.12.2014.

EXHIBIT P3: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE AY -2009-10 DATED 20.10.2014.

EXHIBIT P4: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE AY -2010-11 DATED 20.10.2014.

EXHIBIT P5: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE AY -2011-12 DATED 20.10.2014.

EXHIBIT P6: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE AY -2012-13 DATED 20.10.2014.

EXHIBIT P7: TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 3RD RESPONDENT UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT (AY-2009-10) DATED 14.10.2014.

EXHIBIT P8: TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 3RD RESPONDENT UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT (AY-2010-11) DATED 27.10.14.

WP(C).No. 9684 of 2015 (I)

EXHIBIT P9: TRUE COPY OF THE REVENUE RECOVERY NOTICES ISSUED BY THE 3RD RESPONDENT UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT (AY-2011-12) DATED 27.10.2014.

EXHIBIT P10: TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 3RD RESPONDENT UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT (AY-2012-13) DATED 28.10.2014.

EXHIBIT P11: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WPC.NO. 29018/2014 DATED 5.11.214.

EXHIBIT P12: TRUE COPY OF THE CONDITIONAL ORDER OF STAY PASSED BY THE 2ND RESPONDENT DATED 6.3.2015.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.9684 of 2015

....

Dated this the 26th day of March, 2015

J U D G M E N T

Against Exts.P1 series of assessment orders, the petitioner preferred Exts.P3 to P6 appeals before the 2nd respondent. Along with the appeals, the petitioner had also preferred stay petition. 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.P1 series of 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 for the petitioner and also the learned Government Pleader for the respondents.

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.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, within one month from the date of receipt of a copy of this judgment after hearing the petitioner.

(iii) Recovery steps, if any, 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

mns