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. 9687 of 2015 (I)

PETITIONER:

M/S.EDUSMART SERVICES PVT. LIMITED,
DOOR NO.XIII/442, N.H 47, BYPASS ROAD,
KUMBALAM, ERNAKULAM - 682 506,
REPRESENTED BY ITS AUTHORISED
SIGNATORY SHIBU RASHEED.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS

RESPONDENT(S):
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1. THE INTELLIGENCE OFFICER (INVESTIGATION BRANCH)
COMMERCIAL TAXES, CIVIL STATION ANNEX,
ALAPPUZHA - 688 011.

2. THE ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE III, COMMERCIAL TAX COMPLEX,
ERNAKULAM - 682 015.

3. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, THEVARA ERNAKULAM.

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/

WP(C).No. 9687 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF CERTIFICATE OF REGISTRATION DATED 17.2.10 ISSUED BY THE COMMERCIAL TAX OFFICER, KVAT CIRCLE-II, TRIPUNITHURA.

EXHIBIT P2 : TRUE COPY OF ANNUALRETURN DATED 5.2.11 FOR 2009-10.

EXHIBIT P3 : TRUE COPY OF PENALTY ORDER DATED 14.1.15 ISSUED BY 1ST RESPONDENT TO PETITIONER.

EXHIBIT P4 : TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.3828 OF 2015 DATED 6.2.15.

EXHIBIT P5 : TRUE COPY OF APPEAL/REVISION PETITION DATED 9.2.15 FILED U/S 55 OF THE KVAT ACT BEFORE 3RD RESPONDENT.

EXHIBIT P6 : TRUE COPY OF ARGUMENT NOTE DATED 28.2.15 ALONG WITH EVIDENCES FILED BEFORE 3RD RESPONDENT WHILE URGING STAY PETITION.

EXHIBIT P7 : TRUE COPY OF THE CONDITIONAL STAY ORDER DATED 5.3.15 ISSUED BY 3RD RESPONDENT.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J

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W.P.(C).Nos.9687 of 2015

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Dated this the 26th day of March, 2015

<u>JUDGMENT</u>

Against Ext.P3 penalty order, petitioner preferred Ext.P5 revision petition before the 3rd respondent. Along with the revision petition, the petitioner had also preferred stay petition. The 3rd respondent has now passed Ext.P7 order on the stay petition directing the petitioner to pay a lumpsum amount of Rs.10,00,000/- and furnish a adequate security for the balance amount of Rs.11,42,788/- as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Ext.P3 penalty order.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 3rd 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.P7 order, the 3rd 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.P7 order is quashed and the 3rd 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 3rd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns