IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 10006 of 2015 (A)

PETITIONER(S):

M/S.GAZA MARKETING INDIA (P) LTD,
NEAR SAVERA HOSPITAL, TIRUR, MALAPPURAM DISTRICT.
REPRESENTED BY ITS MANAGING DIRECTOR,
M.ABDUL GAFOOR.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S):

1.COMMERCIAL TAX OFFICER
TIRUR 676 101.

2.ASST. COMMISSIONER (APPEALS)
DEPARTMENT OF COMMERCIAL TAXES,
PALAKKAD 678 001.

3.DEPUTY TAHSILDAR (RR)
TALUK OFFICE, TIRUR 676101

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.10006/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.

EXT.P2: COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P3: COPY OF STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P4: COPY OF THE ORDER IN KVATA 672/14 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10006 OF 2015 (A)

Dated this the 27th 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.P1 assessment order, petitioner preferred Ext.P2 appeal and P3 stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P4 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 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 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.P4 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.P4 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