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. 10026 of 2015 (C)

PETITIONER(S):

MR.SIVAKUMAR,
PROPRIETOR, M/S.GOOWIL PAINTS AND HARDWARES,
KARTHIKA NO.36/435, ST.FRANCIS XAVIER CHURCH ROAD,
KALOOR.

BY ADV. SMT.K.LATHA

RESPONDENT(S):
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1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM. 695 001.

2.THE COMMERCIAL TAX OFFICER, SECOND CIRCLE, TRIPUNITHURA, ERNAKULAM 682 042.

3.THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM 682018.

4.INSPECTING ASST. COMMISSIONER, COMMERCIAL TAXES, KAKKANAD, ERNAKULAM 682 030.

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.10026/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2012-13 DATED 17.12.2014 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT.P2: COPY OF THE APPEAL IN FORM 29 AND GROUNDS OF APPEAL FILED BY THE PETITIONER AGAINST THE P1 ASSESSMENT ORDER FOR THE YEARS 2012-13.

EXT.P3: COPY OF THE DEMAND NOTICE DATED 17.12.2014 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER FOR THE ASSESSMENT YEAR 2012-13.

EXT.P4: COPY OF THE STAY ORDER NO.KVATA 447/2015 DATED 6.3.2015 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10026 OF 2015 (C)

Dated this the 27th day of March, 2015

<u>J U D G M E N T</u>

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the 2nd respondent. Against Ext.P1 assessment order, petitioner preferred Ext.P2 appeal and stay petition before the 3rd respondent. The 3rd 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 3rd 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 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.P4 order is quashed and the 3rd 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 3rd respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp