IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 10332 of 2015 (N)

PETITIONER :

M/S.CURATUS REMEDIES PVT.LTD., AGED 32 YEARS,
AJMAL TOWER, NEAR POLY TECHNIC,
ANGADIPURAM, PERINTHALMANNA - 676 503.
REPRESENTED BY ITS MANAGING DIRECTOR,
DR. RAJEEV CHANDRAN.

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENTS :
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1. COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, PERINTHALMANNA,
   MALAPPURAM DISTRICT - 676 505.

2. ASSISTANT COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, SALES TAX COMPLEX,
   PALAKKAD - 678001.

3. DEPUTY TAHSILDAR (REVENUE RECOVERY),
   OTTAPPALAM TALUK, - 679506, PALAKKAD DISTRICT

R1 TO R3 BY SENIOR GOVERNMENT PLEADER
SMT. SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 10332 of 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF ORDER PASSED U/S. 22(3) BY THE R1 FOR THE YEAR 2013-14.

P2: COPY OF APPEAL DT 11/1/2015 SUBMITTED BY THE PETITIONER, AGAINST EXT P1 ASSESSMENT, BEFORE THE R2.

P3: COPY OF STAY PETITION DT 11/4/2014 SUBMITTED BY THE PETITIONER ALONG WITH EXT P4 APPEAL, BEFORE THE R2.

P4: COPY OF REVENUE RECOVERY NOTICE IN FORM NO1 AND 10 SERVED BY THE R3, PURSUANT TO EXT P1 DEMAND.

P5: COPY OF JUDGMENT DT 15/1/2015 IN WPC NO. 1560/2015 DIRECTING THE R2 TO PASS ORDERS IN EXT P3.

P6: COPY OF MECHANICAL CONDITIONAL ORDER PASSED BY THE R2, IMPOSING HEAVY CONDITION WITHOUT CONSIDERING ANY OF THE CONTENTIONS IN EXT P3 STAY PETITION.

P7: COPY OF FORM NO. 5B DE-REGISTRATION DT 11/08/2014 ISSUED TO THE PETITIONER, BY THE R1.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10332 OF 2015 (N)

Dated this the 30th 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 1st respondent. Against Ext.P1 assessment order, petitioner had preferred Ext.P2 appeal and Ext.P3 stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P6 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.P6 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.P6 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