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. 10342 of 2015 (P)

PETITIONER(S):

JAISON J.MANJALY,
CONTRACTOR, MANJALY HOUSE,
P.O.ALAGAPPANAGAR, THRISSUR - 680 302.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S):

1.THE INTELLIGENCE OFFICER (IB)
DEPARTMENT OF COMMERCIAL TAXES, THRISSUR 680001.

2.THE DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
AYYANTHOLE, THRISSUR 680 001.

3.THE INSPECTING ASSISTANT COMMISSIONER,
OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER,
THRISSUR 680 001.

4.THE VILLAGE OFFICER, AMBALLUR, THRISSUR DIST. 680 002.

5.THE DEPUTY TAHSILDAR (REVENUE RECOVERY)
TALUK OFFICE, MUKUNDAPURAM, THRISSUR 680001.

R BY 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:

W.P.(C).NO.10342/2015

<u>**APPENDIX**</u>

<u>**PETITIONER'S EXHIBITS:**</u>

EXT.P1: COPY OF THE PENALTY ORDER DTD. 4.12.2014 FOR THE YEAR 2008-09 ALONG WITH DEMAND NOTICE ISSUED BY THE FIRST RESPONDENT.

EXT.P2: COPY OF THE REVISION PETITION DATED 12.2.2015 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P3: COPY OF THE STAY PETITION DATED 19.3.2015 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT.P4: COPY OF THE STAY ORDER DATED 21.3.2015 PASSED BY THE 2ND RESPONDENT IN FAVOUR OF THE PETITIONER.

<u>**RESPONDENTS EXHIBITS:**</u> **NIL.**

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10342 OF 2015 (P)

Dated this the 30th 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. Against Ext.P1 penalty order, the petitioner had preferred Ext.P2 revision and Ext.P3 stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P4 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 penalty order.

2. In the writ petition, the petitioner impugns the said conditional orders 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