IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 11289 of 2015 (I)

PETITIONER:

C.K.SUNNY, PROPRIETOR,
CHIRAYIL AGENCIES, CHIRAYIL HOUSE,
VELOOR, KOTTAYAM DISTRICT,
REPRESENTED BY POWER OF ATTORNEY HOLDER,
K.C.MATHEW, CHETHIMUTTATHIL HOUSE, VELOOR,
KOTTAYAM VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.K.M.VARGHESE

RESPONDENT(S):
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1. **SALES TAX OFFICER,**
   1ST CIRCLE, KOTTAYAM - 686 001.

2. **DEPUTY COMMISSIONER(APPEALS) II,**
   COMMERCIAL TAXES, KOTTAYAM - 686 001.

3. **KERALA SALES TAX APPELLATE TRIBUNAL,**
   ADDITIONAL BENCH, KOTTAYAM - 686 001.

4. **THAHSILDAR(RR) OFFICE OF THAHSILDAR(RR),**
   KOTTAYAM - 686 001.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 11289 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE OBJECTION DATED 4TH JULY 2011 FILED BY THE PETITIONER.

EXHIBIT P2 : TRUE COPY OF THE ASSESSMENT ORDER DATED 22ND JULY 2011 IN RESPECT OF KGST.

EXHIBIT P3 : TRUE COPY OF THE ASSESSMENT ORDER DATED 22ND JULY 2011 IN RESPECT OF CST.

EXHIBIT P4 : TRUE COPY OF THE ORDER DATED 26TH MARCH 2012 PASSED BY THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, KOTTAYAM.

EXHIBIT P5 : TRUE COPY OF THE ORDER DATED 1ST FEBRUARY 2014 IN STA NO.159 AND 160 OF 2012 PASSED BY THE RESPONDENT NO.2.

EXHIBIT P6 : TRUE COPY OF THE APPEAL MEMORANDUM DATED 7TH APRIL 2014 IN RESPECT OF KGST FILED BY THE PETITIONER.

EXHIBIT P7 : TRUE COPY OF THE APPEAL MEMORANDUM DATED 7TH APRIL 2014 IN RESPECT OF CST FILED BY THE PETITIONER.

EXHIBIT P8 : TRUE COPY OF THE JUDGMENT DATED 12TH DAY OF AUGUST 2014 IN W.P.(C)NO.20589 OF 2014.

EXHIBIT P9 : TRUE COPY OF THE PETITION FOR STAY DATED 21ST OCTOBER 2014 IN T.A.NO.17 OF 2014 ON THE FILES OF RESPONDENT TRIBUNAL.

EXHIBIT P10 : TRUE COPY OF THE PETITION FOR STAY DATED 21ST OCTOBER 2014 IN T.A.NO.18 OF 2014 ON THE FILES OF RESPONDENT TRIBUNAL.

EXHIBIT P11 : TRUE COPY OF THE JUDGMENT DATED 28TH NOVEMBER 2014 IN W.P.(C)NO.27718 OF 2014.

EXHIBIT P12 : TRUE COPY OF THE ORDER DATED 11TH DECEMBER 2014 PASSED BY RESPONDENT NO.3.

EXHIBIT P13 : TRUE COPY OF THE NOTICE DATED 28TH FEBRUARY 2015 ISSUED BY RESPONDENT NO.4.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.11289 of 2015

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Dated this the 7th day of April, 2015

J U D G M E N T

Against Ext.5 appellate order, petitioner preferred Exts.P6 and P7 appeals before the 3rd respondent. Along with the appeals, the petitioner had also preferred Exts.P9 and P10 stay petitions. The 3rd respondent has now passed Ext.P12 order on the stay petitions directing the petitioner to pay ½ each of the tax disputed and also to furnish security for the balance tax due within 30 days as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Ext.5 appellate 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.P12 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.P12 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

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