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. 11400 of 2015 (Y)

PETITIONER(S):

M/S.FEBIN MARINE FOODS, AGED 53 YEARS
ERAMALLOOR, CHERTHALA, ALAPPUZHA-688 537
REPRESENTED BY ITS PARTNER F.M. FAROOK

BY ADV. SRI.V.DEVANANDA NARASIMHAM

RESPONDENT(S):

1. AIT & COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, KUTHIYATHODU
ALAPPUZHA - 688 533

2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ASRAMOM (PO)
KOLLAM- 691 012

3. THE INSPECTING ASSISTANT COMMISSIONER
COMMERCIAL TAXES, STONE BRIDGE
ALAPPUZHA - 688 011

BY GOVERNMENT PLEADER, SMT. SOBHA ANNAMMA EAPPEN

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

WP(C).No. 11400 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE CST ASSESSMENT ORDER DATED 25.11.2014 FOR THE YEAR 2013-14 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P2 : TRUE COPY OF APPEAL MEMORANDUM DATED 03.01.2015 FILED AGAINST EXT.P1 CST ASSESSMENT ORDER BEFORE 2ND RESPONDENT.

EXHIBIT P3 : TRUE COPY OF IA FOR STAY DATED 03.01.2015 SUBMITTED BY PETITIONER BEFORE 2ND RESPONDENT.

EXHIBIT P4 : TRUE COPY OF RR NOTICE DATED 09.02.2015 FOR 2013-14 ISSUED BY 3RD RESPONDENT TO PETITIONER.

EXHIBIT P5 : TRUE COPY OF THE CONDITIONAL STAY ORDER DATED 06.03.2015 PASSED BY 2ND RESPONDENT DIRECTING THE PETITIONER TO REMIT 30% OF THE AMOUNT DEMANDED AS PER EXT.P1 ASSESSMENT ORDER.

EXHIBIT P6 : TRUE COPY OF COUNTERFOIL COPY OF THE C FORM DATED 23.10.2013 ISSUED BY THE PURCHASING DEALER TO THE PETITIONER.

RESPONDENT'S EXHIBITS:
-------------------------------------- **NIL**

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 11400 of 2015
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Dated this the 7th day of April, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Ext.P1 assessment order for the assessment year 2012-2013, the petitioner had preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P3 stay petition. The 2nd respondent has now passed Ext.P5 order 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 the assessment 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.

4. 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.P5 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.P5 order is quashed and the 2nd respondent is directed to reconsider the matter and pass fresh orders in the stay petitions filed by the petitioner, within one month from the date of receipt of a copy of this judgment after affording an opportunity of hearing to the petitioner.

(iii) Recovery steps pursuant to Ext.P4 order, 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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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