IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 11831 of 2015 (D)

PETITIONER(S):

M/S.HOTEL ROYALE PARK
Y.M.C.A. ROAD, ALAPPUZHA 688 001
REPRESENTED BY ITS MANAGING PARTNER JOSE JOSEPH.

BY ADV. SRI.V.DEVANANDA NARASIMHAM

RESPONDENT(S):

1.THE INTELLIGENCE OFFICER,
SQUAD NO.I, COMERCIAL TAXES, ALAPPUZHA - 688 011.

2.THE ASSISTANT COMMISSIONER (ASSESSMENT),
COMMERCIAL TAXES, SPECIAL CIRCLE,
ALAPPUZHA - 688 001.

3.THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, BAPPUJI NAGAR, ASRAMAM,
KOLLAM 691 002.

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

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.11831/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ANNUAL RETURN E-FILED IN FORM 10 BY THE PETITIONER FOR 2011-12.

EXT.P2: COPY OF COMPOUNDING ORDER DTD. 28.9.2013 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P3: COPY OF THE PENALTY ORDER DATED 28.3.2014 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P4: COPY OF THE ASSESSMENT ORDER DATED 1.8.2014 ISSUED U/S.25(1) OF THE KVATACT, 2003 FOR 2011-12 BY 2ND RESPONDENT TO THE PETITIONER.

EXT.P5: COPY OF THE ASSESSMENT ORDER DATED 1.8.2014 ISSUED U/S.17(3) OF THE KGST ACT FOR THE YEAR 2011-12 BY 2ND RESPONDENT TO THE PETITIONER.

EXT.P6: COPY OF KVAT APPEAL DATED 29.9.2014 FILED FOR 11-12 AGAINST EXT.P4 ASSESSMENT ORDER BEFORE THE 3RD RESPONDENT.

EXT.P7: COPY OF KGST APPEAL DATED 12.12.14 FILED AGAINST EXT.P5 ASSESSMENT ORDER BEFORE THE 3RD RESPONDENT.

EXT.P8: COPY OF THE KGST APPEAL DATED 8.7.2014 FILED AGAINST EXT.P3 PENALTY ORDER ISSUED U/S 45A OF THE KGST ACT BY 1ST RESPONDENT FOR THE YEAR 11-12 BEFORE 3RD RESPONDENT.

EXT.P9: COPY OF RR NOTICE DTD. 27.11.14 ISSUED BY 4TH RESPONDENT TO THE PETITIONER PURSUANT TO EXT.P4 ASSESSMENT ORDER.

EXT.P10: COPY OF RR NOTICE DATED 27.11.2014 ISSUED BY 4TH RESPONDENT TO THE PETITIONER PURSUANT TO EXT.P5 ASSESSMENT ORDER.

EXT.P11: COPY OF THE JUDGMENT IN W.P.(C).NO.16847/2014 DATED 3.7.2014.

EXT.P12: COPY OF THE JUDGMENT IN W.P.(C).NO.34089 OF 2014 DATED 17.12.2014.

EXT.P13: COPY OF THE CONDITIONAL STAY ORDER DT. 8.10.14 PASSED BY 3RD RESPONDENT PURSUANT TO EXT.P3 PENALTY ORDER.

EXT.P14: COPY OF CONDITIONAL STAY ORDER DATED 6.3.2015 PASSED BY 3RD RESPONDENT PURSUANT TO EXT.P4 ASSESSMENT ORDER.

EXT.P15: COPY OF THE CONDITIONAL STAY ORDER DTD. 6.3.2015 PASSED BY 3RD RESPONDENT PURSUANT TO EXT.P5 ASSESSMENT ORDER.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.11831 OF 2015 (D)

Dated this the 9th day of April, 2015

J U D G M E N T

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the 2nd respondent. Against Ext.P3 penalty order and Exts.P4 and P5 assessment orders, the petitioner had preferred Exts.P6 to P8 appeals along with stay petitions before the 3rd respondent. The 3rd respondent has now passed Ext.P13 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.P3 penalty order and Exts.P14 and P15 orders on the stay petitions 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 Exts.P4 and P5 assessment orders.

2. In the writ petition, the petitioner impugns the said conditional orders of stay, inter alia, on the ground that the 3rd respondent had not exercised his discretion validly while passing the

said orders.

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 Exts.P13, P14 and P15 orders, 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) Exts.P13, P14 and P15 orders are quashed and the 3rd respondent is directed to reconsider the matter and pass fresh orders in the stay petitions 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