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. 11986 of 2015 (W)

PETITIONER(S):

P J JOSEPH AGED 59 YEARS
ST. MARY'S RUBBERS, PUTHUPPALLY MATTOM,
MYLADY, KARUKACHAL, KOTTAYAM DT.

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.C.S.SULEKHA BEEVI
SMT.O.A.NURIYA
SMT.ROSIE ATHULYA JOSEPH

RESPONDENT(S):

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1. **THE COMMERCIAL TAX OFFICER, 2ND CIRCLE, COMMERCIAL TAXES, CHANGANACHERRY**

2. **THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL ADL. BENCH, KOTTAYAM- 686 001**

3. **THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY (TAXES), SECRETARIAT, THIRUVANANTHAPURAM- 695 001**

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:

WP(C).No. 11986 of 2015 (W)
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APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1	**TRUE COPY OF THE ASSESSMENT ORDER UNDER SECTION 25(1) FOR THE YEAR 2010-2011 DATED 01.12.2011 COMPLETED BY THE 1ST RESPONDENT.**
EXHIBIT P2	**TRUE COPY OF THE APPEALLTE ORDER DATED 24.03.2014 ISSUED BY THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, KOTTAYAM.**
EXHIBIT P3	**TRUE COPY OF THE APPEAL DATED 01.7.2014 FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT FOR THE A.Y.2010-2011.**
EXHIBIT P4	**TRUE COPY OF THE STAY PETITION DATED 01.07.2014 FILED BEFORE THE SECOND RESPONDENT FOR THE A.Y. 2010-2011.**
EXHIBIT P5	**TRUE COPY OF THE STAY ORDER DATED 26.02.2015 OF THE 2ND RESPONDENT FOR THE A.Y.2010-2011.**

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

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 11986 of 2015
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Dated this the 9th day of April, 2015

JUDGMENT

The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003. Against Ext.P1 assessment order for the assessment year 2010-2011, the petitioner had preferred Ext.P3 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P4 stay petition. The 2nd respondent has now passed Ext.P5 order directing the petitioner to pay half 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, 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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