

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 12210 of 2015 (A)

PETITIONER(S):

**DAEHSAN TRADING (INDIA) PVT. LTD
41/3957, OLD RAILWAY STATION ROAD
PROVIDENCE JUNCTION, COCHIN-18,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER
SRI. V.G. NARAYANAN NAIR, BRANCH MANAGER**

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S):

- 1. THE ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, SPECIAL CIRCLE-II
ERNAKULAM, COCHIN- 682 015**
- 2. THE DEPUTY COMMISSIONER (APPEALS)-II
COMMERCIAL TAXES, ERNAKULAM.**

R BY GOVERNMENT PLEADER, SMT. SOBHA ANNAMMA EAPPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE LICENSE DATED 13.12.2001 ISSUED BY THE DIRECTOR OF DRUGS CONTROL.
- EXHIBIT P2 TRUE COPY OF THE CERTIFICATE ISSUED BY THE AYUSH IN RESPECT OF THE TWO PRODUCTS WHICH ARE THE SUBJECT MATTER OF TAXATION.
- EXHIBIT P3 TRUE COPY OF THE ORDER IN TA No.1367/2003 DATED 31.05.2004.
- EXHIBIT P4 TRUE COPY OF THE NOTICE UNDER SECTION 25(1) OF THE KVAT ACT 2003 No.32070326635/09-10 DATED 13.12.2011.
- EXHIBIT P5 TRUE COPY OF THE ORDER No.32070326635/09-10 DATED 31.3.2012.
- EXHIBIT P6 TRUE COPY OF THE NOTICE OF DEMAND DATED 06.07.2012.
- EXHIBIT P7 TRUE COPY OF THE ORDER IN KVATA APPEAL No.KVATA.2464/2012 DATED 25.09.2014 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE APPEAL FILED BEFORE THE VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM ON 14.01.2015.
- EXHIBIT P9 TRUE COPY OF THE STAY PETITION FILED BEFORE THE VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM ON 15.01.2015.
- EXHIBIT P10 TRUE COPY OF THE ORDER DATED 02.03.2015 IN INTP No.10/2014 IN TA (VAT) No.15/2015 OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ERNAKULAM.
- EXHIBIT P11 TRUE COPY OF THE ORDER IN WPC No.3126/2015 DATED 13.02.2015.
- EXHIBIT P12 TRUE COPY OF THE FIRST INFORMATION REPORT No.16 DATED 04.01.2013.

RESPONDENT'S EXHIBITS:-

NIL

// True copy //

PA to Judge

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 12210 of 2015

Dated this the 10th day of April, 2015

JUDGMENT

The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003. Against Ext.P5 assessment order, the petitioner had preferred Ext.P8 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P9 stay petition. The 2nd respondent has now passed Ext.P10 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.P10 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.P10 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