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. 12454 of 2015 (F)

PETITIONER(S):

MARYGO INTERNATIONAL,
19/1595 C, AMBALAPALLY BUILDING,
VATTAMPOIL, KALLAI ROAD,
CALICUT 673 003, HAVING ITS OPERATING OFFICE
AT PALACE BUILDING, PUTHIYA ROAD, ELOOR,
REPRESENTED BY ITS MANAGING PARTNER ABDUL MAJEED,
AGED 62 YEARS,S/O.HYDROSE.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S):

1.THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST, KOTTAPPURAM,
THRISSUR DISTRICT 680 001.

2.THE SALE TAX OFFICER (ENQUIRY),
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE 673 001.

3.THE INTELLIGENCE INSPECTOR,
INTELLIGENCE SQUAD NO.VIII, COMMERCIAL TAXES,
ERNAKULAM 682 015.

4.THE INTELLIGENCE OFFICER II (RAPID ACTION)
COMMERCIAL TAXES, KOZHIKODE 673 004.

5.THE COMMERCIAL TAX OFFICER, IVTH CIRCLE,
KOZHIKODE 673 004.

6.THE ASSISTANT COMMISSIONER,
SPECIAL CIRCLE I, COMMERCIAL TAXES, KOZHIKODE 673 004.

7.THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOZHIKODE 673 004.

**8.THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE 673 006.**

**9.THE SALES TAX OFFICER (RECOVERY),
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES DEPARTMENT, KOZHIKODE 673 006.**

**10.THE STATE OF KERALA, REPRESENTED BY THE SECRETARY
TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM 695 001.**

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:

W.P.(C).NO.12454/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE REFUND ORDER DATED 3.7.2010 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P1(A): COPY OF THE REFUND ORDER DATED 9.12.2014 ISUSED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P2: COPY OF THE ASSESSMENT ORDER DATED 31.1.2015 FOR THE YEAR 2007-08 PASSED BY THE 6TH RESPONDENT ALONG WITH DEMAND NOTICE.

EXT.P2(A): COPY OF THE ASSESSMENT ORDER DATED 31.1.2015 FOR THE YEAR 2009-10 PASSED BY THE 6TH RESPONDENT.

EXT.P3: COPY OF THE APPEAL MEMORANDUM BEARING NO.VATA-463/15 SUBMITTED BY THE PETITIONER FOR THE ASSESSMENT YEAR 2007-08 BEFORE THE 7TH RESPONDENT ON 23.2.2015.

EXT.P3(A): COPY OF THE APPEAL MEMORANDUM BEARING NO.VATA-464/15 SUBMITTED BY THE PETITIONER FOR THE ASSESSMENT YEAR 2009-10 BEFORE THE 7TH RESPONDENT ON 23.2.2015.

EXT.P4: COPY OF THE STAY PETITION IN VATA-463/15 SUBMITTED BY THE PETITIONER FOR THE ASSESSMENT YEAR 2007-08 BEFORE THE 7TH RESPONDENT.

EXT.P4(A): COPY OF THE STAY PETITION IN VATA-464/15 SUBMITTED BY THE PETITIONER FOR THE ASSESSMENT YEAR 2009-10 BEFORE THE 7TH RESPONDENT.

EXT.P5: COPY OF THE RECOVERY NOTICE DATED 25.3.2015 ISUSED BY THE 9TH RESPONDENT FOR THE YEAR 2007-08.

EXT.P5(A): COPY OF THE RECOVERY NOTICE DATED 25.3.2015 ISSUED BY THE 9TH RESPONDENT FOR THE YEAR 2009-10.

EXT.P6: COPY OF THE STAY ORDER IN SP-192/2015 IN VATA 463/15 DATED 12.3.2015 PASSED BY THE 7TH RESPONDENT IN EXT.P4 STAY PETITION.

EXT.P6(A): COPY OF THE STAY ORDER IN SP-SP-193/2015 IN VATA 464/13 DATED 12.3.2015 PASSED BY THE 7TH RESPONDENT IN EXT.P4(A) STAY PETITION.

EXT.P7: COPY OF THE REQUEST SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT ON 25.3.2015.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.12454 OF 2015 (F)

Dated this the 10th 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 and Central Sales Tax Act, on the files of the 6th respondent. Against Ext.P2 series of assessment orders, the petitioner had preferred Ext.P3 series of appeals and Ext.P4 series of stay petitions before the 7th respondent. The 7th respondent has now passed Ext.P6 series of conditional 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 Ext.P2 series of assessment orders.

2. In the writ petition, the petitioner impugns the said conditional orders of stay, inter alia, on the ground that the 7th 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 Ext.P6 series of conditional orders, the 7th 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.P6 series of orders are quashed and the 7th 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 7th respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp