IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 19TH DAY OF MAY 2015/29TH VAISAKHA, 1937

WP(C).No. 14686 of 2015 (I)

PETITIONER :

JUPITER DRUGS
TANA, IRINJALAKKUDA
PIN:680121 REPRESENTED BY ITS MANAGING
PARTNER SRI. C.P.KURIAKOSE.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENTS :

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1. COMMERCIAL TAX OFFICER-II
   COMMERCIAL TAXES, IRINJALAKUDA-680121.

2. THE INTELLIGENCE OFICER
   SQUAD NO.III, DEPARTMENT OF COMMERCIAL TAXES, POOTHOLE
   THRISSUR-680004.

3. THE ASSISTANT COMMISSIONER (APPEALS)
   COMMERCIAL TAXES, POOTHOLE, THRISSUR-680004.

4. THE DEPUTY TAHSILDAR (R.R)
   TALUK OFFICE, IRINJALAKUDA, THRISSUR DISTRICT
   PIN:680121.

R BY GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 14686 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: COPY OF ASSESSMENT ORDER DATED 30.1.2015 FOR THE YEAR 2011-2012 ISSUED BY THE IST RESPONDENT.

P1(A): COPY OF ASSESSMENT ORDER DATED 30.1.2015 FOR THE YEAR 2012-2013 ISSUED BY THE IST RESPONDENT.

P1(B): COPY OF ASSESSMENT ORDER DATED 30.1.2015 FOR THE YEAR 2013-14 ISSUED BY THE IST RESPONDNET.

P2: COPY OF APPEAL PETITION FILED AGAINST EXT.P1.

P2(A): COPY OF APPEAL PETITION FILED AGAINST EXT.P1(A)

P2(B): COPY OF APPEAL PETITION FILED AGAINST EXT.P1(B).

P3: COPY OF LETTER DATED 14.7.2014 FILED BEFORE THE IST RESPONDENT.

P4: SHOP INSPECTION REPORT DATED 30.4.2013 ISSUED BY THE 2ND RESPONDENT.

P5: COPY OF STAY ORDER DATED 24.3.2015 ON STAY PETITION.

P5(A): COPY OF STAY ORDER DATED 24.3.2015 ON STAY PETITION.

P5(B): COPY OF STAY ORDER DATED 24.3.2015 ON STAY PETITION.

P6: COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 4TH RESPONDENT AGAINST EXT.P1 DATED 17.3.2015.

P6(A): COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 4TH RESPONDENT AGAINST EXT.P1(A) DATED 17.3.2015.

P6(B): COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 4TH RESPONDENT AGAINST EXT.P1(B) DATED 17.3.2015.

P7: RECOVERY/ATTACHMENT OF MOVABLE PROPERTIES ORDER DATED 5.5.2015.

P8: COPY OF THE REPRESENTATION FILED BEFORE THE 3RD RESPONDENT DATED 16.4.2015.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.14686 of 2015

Dated this the 19th day of May, 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 1st respondent. Against Exts.P1, P1(a) and P1(b) assessment orders, petitioner had preferred Exts.P2, P2(a) and P2(b) appeals and stay petitions before the 3rd respondent. The 3rd respondent has now passed Exts.P5, P5(a) and P5(b) 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.P1, P1(a) and P1(b) assessment orders.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 3rd 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.

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.P5, P5(a) and P5(b) 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 **<u>Archana Agencies v. Commercial Tax Officer</u> - <u>[2014 (2) KLT 715]</u>** that an authority considering a stay petition is bound to give reasons even while granting conditional stay.

(ii) Exts.P5, P5(a) and P5(b) orders are quashed and the 3rd respondent is directed to reconsider the matter and pass fresh orders in the stay petition 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.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

AV