IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 21586 of 2015 (W)

PETITIONER(S):

SABU G.,
AGED 49 YEARS, "MINA", KOTTAPURAM, ELAMPAZHANNOOR P.O.,
KADAKKAL, KOTTARAKKARA, KOLLAM - 691 534.

BY ADV. SRI.NOBLE MATHEW

RESPONDENT(S):

1. **STATE OF KERALA,**
   REPRESENTED BY ITS PRINCIPAL SECRETARY, TAXES,
   SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. **THE DEPUTY COMMISSIONER (APPEAL),**
   DEPARTMENT OF COMMERCIAL TAXES, KOLLAM - 691 001.

3. **COMMERCIAL TAX OFFICER,**
   DEPARTMENT OF COMMERCIAL TAXES, ANCHAL,
   KOLLAM - 691 306.

4. **INSPECTING ASSISTANT COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES, KOTTARAKKARA,
   KOLLAM - 691 506.

BY SENIOR GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 21586 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER DTD. 27.10.2012.

EXT.P2: TRUE COPY OF THE PROCEEDINGS OF THE COMMERCIAL TAX OFFICER-I, COMMERCIAL TAX OFFICE, ANJAL, ALONG WITH THE DEMAND NOTICE DTD. 25.2.2011.

EXT.P3: TRUE COPY OF THE ORDER OF THE ASSESSING AUTHORITY ESTIMATING THE TURN OVER AND DEMANDING AN AMOUNT OF RS.73044/-FOR THE ASSESSMENT YEAR 2010-11.

EXT.P4: TRUE COPY OF THE INTERLOCUTORY APPLICATION FILED AGAINST THE ORDER DATED 22.5.2011 FOR THE ASSESSMENT YEAR 2010-11 ALONG WITH THE DELAY CONDONATION PETITION.

EXT.P5: PHOTOSTAT COPY OF THE ORDER NO.KVATA (KLM) 406/14 & 407/14 DATED 19.06.2015.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.21586 of 2015

....

Dated this the 17th day of July, 2015

J U D G M E N T

Against Ext.P2 and P3 assessment orders, petitioner preferred appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred a stay petition along with the delay condonation petition. The 2nd respondent has now passed Ext.P5 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 Exts.P2 and P3 assessment orders.

2. In the writ petition, the petitioner impugns the said conditional order 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 for the petitioner and also the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and 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 petition, within one month from the date of receipt of a copy of this judgment after hearing the petitioner.

(iii) Recovery steps, if any, 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns