

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).NO. 24463 OF 2015 (G)

PETITIONER(S) /PETITIONER:

M/S. ELITE FOODS (P) LTD., 60,
60, MAJOR INDUSTRIAL ESTATE
KALAMASSERY DEVELOPMENT PLOT, ERNAKULAM-683109
REPRESENTED BY C.G.PRATHIBASMIDAN
CHIEF EXECUTIVE OFFICER.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S) /RESPONDENTS:

1. THE ASSISTANT COMMISSIONER
COMMERCIAL TAXES SPECIAL CIRCLE-II
ERNAKULAM-682015.

2. DEPUTY COMMISSIONER (APPEALS)-II
DEPT. OF COMMERCIAL TAXES, ERNAKULAM-682015.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 24463 OF 2015 (G)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1- COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 04-01-2010

EXHIBIT P2- COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DATED 06-04-2015.

EXHIBIT P3- COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 26-06-2015.

EXHIBIT P4- COPY OF ORDER PASSED BY THE 1ST RESPONDENT DATED 30-06-2015.

EXHIBIT P5- COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 20-07-2015

EXHIBIT P6- COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 24-07-2015

EXHIBIT P7- COPY OF JUDGMENT IN WPC NO. 12039/2014 OF THIS HON'BLE COURT DATED 09.05.2014

EXHIBIT P7(A) - COPY OF JUDGMENT IN WPC NO. 18777/2014 OF THIS HON'BLE COURT DATED 24.07.2014

EXHIBIT P8- COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 29.11.2015

EXHIBIT P8(A) - COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 29.08.2014

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.24463 OF 2015

.....
Dated this the 3rd day of September, 2015

J U D G M E N T

Against Ext.P4 assessment order, petitioner preferred Ext.P5 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred a stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P6 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 Ext.P4 assessment order.

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.P6 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.P6 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/

