IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 26344 of 2015 (P)

PETITIONER:

M/S. NIRAAMAYA RETREATS KOVALAM (PVT) LTD.,
SURYA SAMUDRA, CHOWARA, THOTTAM,
THIRUVANANTHAPURAM-695 521,
REPRESENTED BY ISTAUTHORIZED SIGNATORY
RAJEESHKUMAR S.V.

BY ADVS.SRI.V.V.NANDAGOPAL NAMBIAR
SMT.SMITHA (EZHUPUNNA)

RESPONDENT(S):
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1. **THE ASSISTANT COMMISSIONER-II (ASSESSMENT),**
   KVAT SPECIAL CIRCLE, KARAMANA,
   THIRUVANANTHAPURAM-695 002.

2. **THE DEPUTY COMMISSIONER (APPEALS),**
   DEPATMENT OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM-695 002.

3. **INSPECTING ASSISTANT COMMISSIONER,**
   DEPATMENT OF COMMERCIAL TAXES,
   NEYYATINKARA, THIRUVANANTHAPURAM-695 121,
   (AUTHORIZED OFFICER UNDER REVENUE RECOVERY ACT)

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 26344 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2010-11 DATED17/1/15.

EXT.P2: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 6.4.15.

EXT.P3: TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 6/4/15.

EXT.P4: TRUE COPY OF THE INTERIM ORDER DATED 20/7/15 ISSUED BY 2ND RESPONDENT.

EXT.P5: TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 7 OF THE REVENUE RECOVERY ACT DATED 25/6/15.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26344 of 2015

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Dated this the 1st day of September, 2015

JUDGMENT

The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003. Against Ext.P1 assessment order, the petitioner had preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P3 stay petition. The 2nd respondent has now passed Ext.P4 order directing the petitioner to 30% 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 note that the appellate

authority, while passing the impugned orders, has merely reiterated the reasons that weighed with the assessing authority while entering a finding against the assessee. There is no independent consideration by the appellate authority of the material produced by the petitioner before him at the time of hearing. Further, in Ext.P4 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. I therefore, quash Ext.P4 order and direct the 2nd respondent 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. 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

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