IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 26619 of 2015 (B)

PETITIONER(S):

M/S.JO TRADERS, AGED 38 YEARS,
VATTOMPARAMBIL HOUSE, S.PARAVOOR, UDAYAMPERUR,
REPRESENTED BY ITS PROPRIETOR JOJO ABRAHAM.

BY ADVS.SRI.K.J.ABRAHAM
SRI.NIKHIL JOHN

RESPONDENT(S):

1.THE COMMERCIAL TAX OFFICER
1ST CIRCLE, COMMERCIAL TAXES, THRIPUNITHURA 682 301.

2.THE ASSISTANT COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM 682 015.

3.THE INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM 682 030.

R BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.26619/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ASSESSMENT ORDER NO.32071022008/2012-13 DATED 16.2.2015.

EXT.P2: COPY OF THE APPEAL MEMORANDUM IN FORM NO.29 FOR THE YEAR 2012-13 DATED 9.3.2015.

EXT.P3: COPY OF THE FORM NO.30 STAY PETITION DATED 9.3.2015.

EXT.P4: COPY OF THE FORM NO.1 DEMAND NOTICE NO.A5-1872/15 DATED 27.7.2015.

EXT.P5: COPY OF THE AUDIT STATEMENT IN FORM NO.13 & 13 A DATED NIL.

EXT.P6: COPY OF THE NOTICE OF THE THRIPUNITHURA MUNICIPALITY DATED 11.1.2013.

EXT.P7: COPY OF THE STAY ORDER NO.KVATA - 562/2015 DATED 11.8.2015.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.26619 OF 2015 (B)

Dated this the 4th day of September, 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 Ext.P1 assessment order, petitioner had preferred Ext.P2 appeal and Ext.P3 stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P7 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.P1 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 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.P7 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.P7 order is quashed and the 2nd 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 2nd respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp