

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. 26636 of 2015 (D)

PETITIONER(S):

**M/S.PERIYAR AGENCIES,
32/916, ANCHUMANA, EDAPPALLY P.O.,
KOCHI - 24, REPRESENTED BY ITS PARTNER, C.M.MUHAMMED.**

**BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.KSHAMUSUDHEEN**

RESPONDENT(S):

**1. THE COMMERCIAL TAX OFFICER,
2ND CIRCLE, KALAMASSERY AT CIVIL STATION,
KAKKANAD - 682 030.**

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

**3.THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
TALUK OFFICE, KUNNATHUNAD, PERUMBAVOOR - 683 542.**

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:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2012-13 DATED 30.8.2014.

EXT.P2: COPY OF THE ASSESSMENT ORDER PASSED BY 1ST RESPONDENT FOR THE YEAR 2013-14 DATED 30.8.2014.

EXT.P3: COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2012-13 DATED 17.1.2015.

EXT.P4: COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2013-14 DATED 17.1.2015.

EXT.P5: COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2012-13 DATED 17.1.2015.

EXT.P6: COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2013-14 DATED 17.1.2015.

EXT.P7: COPY OF THE INTERIM ORDER PASSED BY 2ND RESPONDENT FOR THE YEARS 2012-13 & 2013-14 DATED 29.7.2015.

EXT.P8: COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT ISSUED BY 3RD RESPONDENT FOR THE YEAR 2012-13 DATED 24.11.2014.

EXT.P9: COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT ISSUED BY 3RD RESPONDENT FOR THE YEAR 2013-14 DATED 24.11.2014.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.26636 OF 2015 (D)

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 Exts.P1 and P2 assessment orders, petitioner had preferred Exts.P3 and P4 appeals and Exts.P5 and P6 stay petitions before the 2nd respondent. The 2nd respondent has now passed Ext.P7 order 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 Exts.P1 and P2 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 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