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. 26650 of 2015 (E)

PETITIONER :

M.I. MOHAMMED, AGED 57 YEARS,
PROPRIETOR, UNITED GRANITES, PERUMBAVOOR,
ERNAKULAM (DT)

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR
SMT.V.P.SEENA DEVI

RESPONDENTS :
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1. **COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAX CHECK POST, WALAYAR 678 624

2. **COMMERCIAL TAX OFFICER(ENQUIRY),**
   O/O THE DEPUTY COMMISSIONER, COMMERCIAL TAXES,
   MATTANCHERRY - 682 002

3. **ASSISTANT COMMISSIONER(APPEALS),**
   O/O. THE DEPUTY COMMISSIONER(APPEALS),
   COMMERCIAL TAXES, ERNAKULAM 682 015

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:

bp

WP(C).No. 26650 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE CERTIFICATE OF REGISTRATION BEARING TIN 32151379994 DT 29.9.2014 ISSUED BY THE ASST. COMMISSIONER, SPECIAL CIRCLE, PERUMBAVOOR.

P2: COPY OF THE INVOICE ISSUED BY M/S. DIAMLER INDIA COMMERCE VEHICLES (P) LTD., KANCHEEPURAM BEARING NO. 1635031116 DT 30/9/2014 TO PETITIONER.

P3: COPY OF THE INVOICE ISSUED BY M/S. DIAMLER INDIA COMMERCE VEHICLES (P) LTD., KANCHEEPURAM BEARING NO. 16350119 DT 30/9/2014 TO PETITIONER.

P4: COPY OF NOTICE IN FORM NO. 17A NO. VCI/423/14-15 DT 10-10-2015 ISSUED BY THE R1.

P5: COPY OF NOTICE IN FORM NO. 17A NO. VCI/424/14-15 DT 10/10/2015 ISSUED BY THE R1.

P6: COPY OF THE REPLY FILED ON 13/10/2015 BEFORE THE R1.

P7: COPY OF THE JUDGMENT DT 17/10/2014 IN WPC NO. 26840/2015 OF THIS HONOURABLE HIGH COURT.

P8: COPY F THE SIMPLE BOND IN FORM 6 FOR RS. 16,62, 280/- FILED ON 17/10/2014 BY THE PETITIONER.

P9: COPY OF THE ARGUMENT NOTE DT 10/12/2014 FILED BEFORE THE R2.

P10: COPY OF THE ORDER BERING NO. OR 423/14-15(G61/14-150 DT 20/12/2014 OF THE R2.

P11: COPY OF THE ORDER BEARING NO. OR 424/14-15(561/14-15) DT 20/12/2014 OF THE R2.

P12: COPY OF THE APPEAL AGAINST EXT P10 FILED BEFORE THE RE ON 5/6/2015.

P12(a): COPY OF THE APPLICATION FOR STAY FILED IN EXT P12 BEFORE THE R3 ON 5/6/2015.

P13: COPY OF THE APPEAL AGAINST EXT P11 FILED BEFORE THE R3 ON 5/6/2015.

P13(a): COPY OF THE APPLICATION FOR STAY FILED IN EXT P13. BEFORE THE R3 ON 5-6-2015.

P13(b): COPY F THE APPLICATION FOR EARLY HEARING FILED IN EXT P13 BEFORE THE R3 ON 5/6/2015.

P14: COPY OF THE ORDER NO. KVATA 1233/2015 DT 28/7/2015 IN EXT P12(a) ISSUED BY THE R3.

P15: COPY OF THE ORDER NO. KVATA 1232/2015 DT 28/7/2015 IN EXT. P13(a) ISSUED BY THE R3.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26650 of 2015

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Dated this the 4th day of September, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Exts.P10 and P11 penalty orders, the petitioner had preferred Exts.P12 and P13 appeals before the 3rd respondent. Along with the appeal, the petitioner had also preferred Exts.P12(a) and P13(a) stay petitions. The 3rd respondent has now passed Exts.P14 and P15 orders 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 the assessment orders.

2. In the writ petition, the petitioner impugns the said conditional orders of stay, inter alia, on the ground that the 3rd 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 dispose the writ petition with the following directions:-

(i) In Exts.P14 and P15 orders, the 3rd 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) Exts.P14 and P15 orders is quashed and the 3rd respondent is directed 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.

(iii) Recovery steps, initiated against the petitioner shall be kept in abeyance till such time as fresh orders are passed by the 3rd respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das