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. 26743 of 2015 (P)

PETITIONER(S):

**MUNEER, AGED 38 YEARS,
S/O.IBRAHIMKUTTY, "MUTHANISSERIL MARBLES",
VETTUVENI, HARIPPAD, ALAPPUZHA DISTRICT,
PIN - 690 523, RESIDING AT MUTTANISSERIL,
PADA NORTH, KARUNAGAPPALLY, KOLLAM.**

**BY ADVS.SRI.P.V.VENUGOPAL
SRI.L.RAJESH NARAYAN**

RESPONDENT(S):

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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, SECRETARIAT, THIRUVANNATHAPURAM, PIN - 695 001.**

2. **DEPUTY COMMISSIONER (APPEALS) II, DEPARTMENT OF COMMERCIAL TAXES, COMMERCIAL TAX COMPLEX, ASHRAMAM P.O., KOLLAM, PIN - 691 001.**

3. **ASSISTANT COMMISSIONER (ASSESSMENT), COMMERCIAL TAX OFFICE, SPECIAL CIRCLE, CIVIL STATION, ALAPPUZHA, PIN - 688 001.**

4. **COMMERCIAL TAX OFFICER, HARIPAD, PIN - 690 514.**

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:

msv/

WP(C).No. 26743 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE ASSESSMENT ORDER NO.32041290734 DTD.21.7.2015 ISSUED BY THE 3RD RESPONDENT.

EXT.P2: TRUE COPY OF THE NOTICE OF DEMAND IN FORM NO.12 BEARING NO.39/2015-16, DTD.21.7.2015 ISSUED BY THE 3RD RESPONDENT.

EXT.P3: TRUE COPY OF THE DOWN LOADED EXTRACT INDICATING CLOSING STOCK A ONE INDUSTRIES PANMANA WRONGLY RELIED BY MUTHANISSERIL MARBLES.

EXT.P4: TRUE COPY OF ACTUAL CLOSING STOCK INVENTORY OF A ONE INDUSTRIES AMOUNTING RS.1,70, 563/-

EXT.P5: TRUE COPY OF AUDIT REPORT ALONG WITH BALANCE SHEET FOR YEAR 2010-2011 INDICATING CLOSING STOCK PERTAINING TO MUTHANISSERIL OF RS.64,02,010/-

EXT.P6: TRUE COPY OF THE APPLICATION FOR FILING REVISED STATEMENT DTD.6.5.2014 ACKNOWLEDGED BY 4TH RESPONDENT COMMERCIAL TAX OFFICER, HARIPPAD.

EXT.P7: TRUE COPY OF APPLICATION FOR REVISING MONTHLY/ANNUAL RETURN FOR THE ASSESSMENT YEAR 2010-2011 DTD.9.5.2014 GIVEN TO THE 4TH RESPONDENT AT PRESENT ENTRUSTED WITH 3RD RESPONDENT.

EXT.P8: TRUE COPY PAYMENT DETAILS VIDE E FILING BY PETITIONER AND REPORTS (PAYMENT AND UTILIZATION) OF ADVANCE TAX FROM 1.4.2010 TO 31.3.2011 HAD PAID RS.17,46,502/-

EXT.P9: TRUE EXTRACT OF DOWN LOADED FROM KVAT SITE DOEN LOADED FROM KVAT WEB SITE FIGURING AN AMOUNT OF RS.16,91,113/-

EXT.P10: TRUE COPY OF MEDICAL CERTIFICATE INDICATING AILMENT OF PETITIONER UNDERGOING AYURVEDIC TREATMENT FROM 10.6.2015 TO 25.7.2015 ISSUED BY NAVEENA AYURVEDA HOSPITAL, KARUNAGAPPALLY.

EXT.P11: TRUE COPY OF STATUTORY APPEAL BEFORE THE 2ND RESPONDENT DEPUTY COMMISSIONER (APPEALS) II AGAINST EXT.P1-P2 VIDE APPEAL NO.383/15 ALONG WITH STAY PETITION DTD.11.8.2015.

EXT.P12: TRUE COPY OF COMMON ORDER IN KVATA (ALPY) 383.384 & 385/15 DTD.13.8.2015 SERVED TO THE PETITIONER ON 20.8.2015.

EXT.P13: TRUE COPY OF THE REPRESENTATION DTD.25.6.2015.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26743 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 Ext.P1 assessment order for the assessment year 2010-2011, the petitioner had preferred Ext.P11 appeal along with a stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P12 order 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 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 dispose the writ

petition with the following directions:-

(i) In Ext.P12 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.P12 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 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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das