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. 26770 OF 2015 (U)

PETITIONER(S):

M/S. NJK BUILDERS (PVT) LTD, 41/1273
KRISHNA KRIPA, C.P.UMMER ROAD, KOCHI-682 035 I,REPRESENTED BY
ITS MANAGEING DIRECTOR MR.N.JAYAKRISHNAN

BY ADV. SMT.K.LATHA

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM,695001

2. THE ASST.COMMISSIONER(WORKS CONTRACT), COMMERCIAL TAXES, ERNAKULAM 682015

3. THE DEPUTY COMMISSIONER (APPEALS) COMMERCIAL TAXES ERNAKULAM-682018

4. INSPECTING ASST.COMMISSIONER, COMMERCIAL TAXES, KAKKANAD, ERNAKULAM-682030

BY GOVERNMENT PLEADER SMT.LILLY K.T

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

WP(C).NO. 26770 OF 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. THE TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2007-2008 DATED 31.03.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER

EXHIBIT P2.THE TRUE COPY OF THE APPEAL IN FORM 29 AND GROUNDS OF APPEAL FILED BY THE PETITIONER AGAINST THE P1 ASSESSMENT ORDER FOR THE YEARS 2007-2008

EXHIBIT P3. THE TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED IN FORM 1 DATED 07.08.2015 ISSUED BY THE FOURTH RESPONDENT TO THE PETITIONER

EXHIBIT P4. THE TRUE COPY OF THE STAY ORDER NO.KVATA 1480/2015 DATED 12-08-2015 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER

EXT.P5: THE TRUE COPY OF THE FORM 20 C DATED 07.03.2008, 17.03.2008 AND 20F DATED 02.09.2015 ISSUED BY THE COCHIN PORT TRUST

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.26770 of 2015

Dated this the 4th day of September, 2015

J U D G M E N T

Against Ext.P1 assessment order, petitioner preferred Ext.P2 appeal before the 3rd respondent. Along with the appeal, the petitioner had also preferred Ext.P4 stay petition. The 3rd respondent has now passed Ext.P4 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 3rd respondent had not exercised his discretion validly while passing the said order.

3. I have heard the learned counsel for the petitioner and also the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and submissions made across the bar, I dispose the writ petition with the following directions:-

(i) In Ext.P4 order, 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) Ext.P4 order is quashed and the 3rd 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 hearing the petitioner.

(iii) Recovery steps, if any, 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns