IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 26800 of 2015 (Y)

PETITIONER :

M/S.GLOBAL POWER SOLUTIONS,
DOOR NO.VI/468, D & E, CHALIL BUILDING,
OPPOSITE KEL, MAMALA P.O., ERNAKULAM,
REPRESENTED BY ITS MANAGING PARTNER,
C.T.VENUGOPAL.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT(S):
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1. THE COMMERCIAL TAX OFFICER, IVTH CIRCLE,
   COMMERCIAL TAXES, ERNAKULAM - 682 015.

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

3. THE DEPUTY TAHSILDAR (RR),
   KANAYANNUR TALUK, ERNAKULAM, KOCHI - 682 011.

BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 26800 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY IST RESPONDENT FOR THE YEAR 2011-12 DATED 30.9.2014

EXT.P-2: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 18.3.2015

EXT.P-3: TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 18.3.2015

EXT.P-4: TRUE COPY OF THE INTERIM ORDER PASSED BY THE 2ND RESPONDENT FOR THE YEAR 2011-12 DATED 29.7.2015

EXT.P-5: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED BY 3RD RESPONDENT FOR THE YEAR 2011-12 DATED 16.2.2015

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26800 of 2015

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Dated this the 7th 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 2011-2012, the petitioner had preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P3 stay petition. The 2nd respondent has now passed Ext.P4 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 the 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.P4 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.P4 order is quashed and the 2nd 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 2nd respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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