IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(C).No. 26994 of 2015 (Y)

PETITIONER(S) :

M/S.NEW STAR CASHEW INDUSTRIES,
REPRESENTED BY SMT.ASYA K.
LEGAL HEIR AND WIFE OF EX-PROPRIETOR,
LATE L.K.UMMER, AMBALATHARA, KASARAGOD.

BY ADVS.SRI.RAJESH NAMBIAR
SMT.SINDHU K.NAMBIAR

RESPONDENT(S) :

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1. ASST. COMMISSIONER,
KVAT SPECIAL CIRCLE, COMMERCIAL TAXES,
KASARAGOD, PIN- 672 001.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOZHIKODE, PIN- 673 702.

3. TAHSILDAR,
HOSDURG, KASARAGOD, PIN- 672 001.

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 26994 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS :

P1 : TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2006-07 UNDER KVAT DATED 11-11-2013.

P2 : TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2006-07 UNDER CST DATED 11-11-2013.

P3 : TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2007-08 UNDER KVAT DATED 11-11-2013.

P4 : TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2008-09 UNDER CST DATED 18-02-2014.

P5 : TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT AGAINST EXT.P1 ASSESSMENT ORDER.

P6 : TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT AGAINST EXT.P2 ASSESSMENT ORDER.

P7 : TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT AGAINST EXT.P3 ASSESSMENT ORDER.

P8 : TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT AGAINST EXT.P4 ASSESSMENT ORDER.

P9 : TRUE COPY OF THE STAY PETITION FILED BEFORE THE 2ND RESPONDENT AGAINST EXT.P5 APPEAL.

P10 : TRUE COPY OF THE STAY PETITION FILED BEFORE THE 2ND RESPONDENT AGAINST EXT.P6 APPEAL.

P11 : TRUE COPY OF THE STAY PETITION FILED BEFORE THE 2ND RESPONDENT AGAINST EXT.P7 APPEAL.

P12 : TRUE COPY OF THE STAY PETITION FILED BEFORE THE 2ND RESPONDENT AGAINST EXT.P8 APPEAL.

P13 : TRUE COPY OF THE STAY ORDER DATED 08-07-2015 IN EXT.P9 STAY PETITION.

P14 : TRUE COPY OF THE STAY ORDER DATED 08-07-2015 IN EXT.P10 STAY PETITION.

P15 : TRUE COPY OF THE STAY ORDER DATED 08-07-2015 IN EXT.P11 STAY PETITION.

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P16 : TRUE COPY OF THE STAY ORDER DATED 08-07-2015 IN EXT.P12 STAY PETITION.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.26994 of 2015

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Dated this the 8th day of September, 2015

J U D G M E N T

Against Exts.P1 to P4 assessment orders, petitioner preferred Exts.P5 to P8 appeals before the 2nd respondent. Along with the appeals, the petitioner had also preferred Exts.P9 to P12 stay petitions. The 2nd respondent has now passed Exts.P13 to P16 orders on the stay petitions, directing the petitioner to pay 50% of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Exts.P1 to P4 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 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 Exts.P13 to P16 orders, 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) Exts.P13 o P16 orders are 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 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 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns