

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 27168 of 2015 (U)

PETITIONER(S) :

**JOSEPH.J.VAYALAT,
PROPRIETOR - VAYALAT EXPORTS,
RESIDING AT HOUSE NO.XVIII/54, PALLURUTHY,
ERNAKULAM.**

**BY ADVS.SRI.A.C.DEVY
SRI.V.K.SHAMUSUDHEEN**

RESPONDENT(S) :

- 1. COMMERCIAL TAX OFFICER,
IIND CIRCLE, MATTANCHERRY - 682 002.**
- 2. THE ASSISTANT COMMISSIONER (APPEALS),
DEPARTMENT COMMERCIAL TAXES, ERNAKULAM.**
- 3. THE DEPUTY TAHSILDAR (RR),
O/O. SPECIAL TAHSILDAR (RR), KOCHI - 682 001.**

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

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

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P-1: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY
1ST RESPONDENT FOR THE YEAR 2011-12 DATED 29.08.2014.**
- EXT.P-2: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY
1ST RESPONDENT FOR THE YEAR 2012-13 DATED 29.08.2014.**
- EXT.P-3: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT AGAINST EXT.P1 ORDER.**
- EXT.P-4: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT AGAINST EXT.P2 ORDER.**
- EXT.P-5: TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT ALONG WITH EXT.P3 APPEAL.**
- EXT.P-6: TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT ALONG WITH EXT.P4 APPEAL.**
- EXT.P-7: TRUE COPY OF THE INTERIM ORDER PASSED BY
THE 2ND RESPONDENT FOR THE YEAR 2011-12 DATED 28.07.2015.**
- EXT.P-8: TRUE COPY OF THE INTERIM ORDER PASSED BY
THE 2ND RESPONDENT FOR THE YEAR 2012-13 DATED 28.07.2015.**
- EXT.P-9: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF
THE REVENUE RECOVERY ACT ISSUED BY 3RD RESPONDENT
DATED 27.03.2015 FOR THE YEAR 2011-12.**
- EXT.P-10: TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF
THE REVENUE RECOVERY ACT ISSUED BY 2ND RESPONDENT
DATED 27.03.2015 FOR THE YEAR 2012-13.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.27168 of 2015

.....
Dated this the 9th day of September, 2015

J U D G M E N T

Against Exts.P1 and P2 assessment orders, petitioner preferred Exts.P3 and P4 appeals before the 2nd respondent. Along with the appeals, the petitioner had also preferred Exts.P5 and P6 stay petitions. The 2nd respondent has now passed Exts. P7 and P8 orders on the stay petitions 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 Exts.P1 and P2 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. P7 and P8 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. P7 and P8 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. While considering the stay petitions afresh, the 2nd respondent shall also taken into account the C-Forms produced by the petitioner to substantiate his contentions on merits.

(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

