IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).NO. 27963 OF 2015 (U)

PETITIONER:

JOHN'S CASHEW COMPANY,
KARIPPURAM, KOTTARAKARA, KUNDARA
REPRESENTED BY THE PROPRIETOR SRI.BINU JOHN

BY ADVS.SRI.S.SURESH BABU (CHERUNNIYOOR)
SRI.AJI V.DEV

RESPONDENT(S):

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1. **DEPUTY COMMISSIONER (APPEALS) - 1**
   COMMERCIAL TAXES, TAX COMPLEX, ASRAMAM, KOLLAM 691 012.

2. **THE ASSISTANT COMMISSIONER (ASSMT),**
   COMMERCIAL TAXES, SPECIAL CIRCLE, SPECIAL CIRCLE
   KOLLAM 691 012.

3. **THE INTELLIGENCE OFFICER (INVESTIGATION BRANCH)**
   TAX COMPLEX, ASRAMAM, KOLLAM 691 012.

BY PUBLIC PROSECUTOR SRI.LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AS

WP(C).NO. 27963 OF 2015 (U)

APPENDIX

PETITIONER'S' EXHIBITS:

P1: ORIGINAL ASSESSMENT ORDER DATED 30/10/2010 FOR THE YEAR 2006-07 ISSUED BY 2ND RESPONDENT UNDER CST ACT, 1956.

P2: PRE-ASSESSMENT NOTICE DATED 19/4/2012 ORIGINALLY ISSUED BY THE 2ND RESPONDENT PROPOSING RE-ASSESSMENT UNDER RULE 6(7) OF THE CST (KERALA) RULES 1957.

P3: REPLY DATED 9/5/2012 FILED BY THE PETITIONER, TO THE PRE-ASSESSMENT NOTICE DATED 19/4/2012.

P4: PRINT OUT FROM TINXSYS WEBSITE EVIDENCING THE STATES OF DELHI DEALER M/S.ADITYA SALES CORPORATION WHO ISSUED 'F' FORMS.

P4(A): PRINT OUT FROM TINXSYS WEBSITE EVIDENCING THE STATES OF DELHI DEALER M/S.PRAMOD TRADING CORPORATION WHO ISSUED 'F' FORMS.

P4(B): PRINT OUT FROM TINXSYS WEBSITE EVIDENCING THE STATES OF DELHI DEALER M/S.GAGAN ENTERPRISES WHO ISSUED 'F' FORMS.

P5: REVISED PENALTY NOTICE DATED 20/11/2013 OF THE 3RD RESPONDENT UNDER SECTION 67(1) OF THE KVAT ACT, 2003.

P6: OBJECTION DATED 25/12/2013 FILED BY THE PETITIONER TO PENALTY NOTICE DATED 20/11/2013.

P7: PENALTY ORDER DATED 28/3/2014 ISSUED BY THE 3RD RESPONDENT INTELLIGENCE OFFICER.

P8: REVISION PETITION DATED 6/6/2014 FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER, KOLLAM.

P8(A): STAY PETITION DATED 20/6/2014 FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER, KOLLAM.

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P9: STAY ORDER DATED 26/9/2014 ISSUED BY THE DEPUTY COMMISSIONER, KOLLAM.

P10: RE-ASSESSMENT NOTICE UNDER CST ACT DATED 18/2/2015 ISSUED BY THE 2ND RESPONDENT ASSESSING AUTHORITY.

P11: OBJECTION DATED 7/3/2015 FILED BY THE PETITIONER TO THE REASSESSMENT NOTICE DATED 18/2/2015.

P12: RE-ASSESSMENT ORDER DATED 10/3/2015 ISSUED BY THE 2ND RESPONDENT UNDER THE CST ACT.

P13: APPEAL DATED 13/4/2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P13(A): STAY PETITION DATED 9/4/2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P14: STAY ORDER DATED 13/8/2015 ISSUED BY THE 1ST RESPONDENT

RESPONDENT'S EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AS

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.27963 OF 2015

Dated this the 16th day of September, 2015

J U D G M E N T

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 and the Central Sales Tax Act. Against Ext.P12 reassessment order, petitioner had preferred Ext.P13 appeal and Ext.P13(a) stay petition before the 1st respondent. The 1st respondent has now passed Ext.P14 order on the stay petition directing the petitioner to remit 15% of the balance tax and interest demanded as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Ext.P12 reassessment order.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 1st respondent had not exercised his discretion validly while passing the said order, in particular, the aspect of limitation not considered.

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

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.P14 order, the 1st 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.P14 order is quashed and the 1st respondent is directed to reconsider the matter and pass fresh orders in the stay petition filed by the petitioner, within two months 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 1st respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

rsr