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. 27964 OF 2015 (U)

PETITIONER:

**M/S.SREE NARAYANA CONSTRUCTIONS (P) LTD,
NEAR K.S.R.T.C. BUS STATION, KOLLAM-1, REP. BY ITS
MANAGING DIRECTOR SRI.VARADARAJAN.V.**

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

RESPONDENTS:

1. **DEPUTY COMMISSIONER (APPEALS)-II, COMMERCIAL TAXES, TAX COMPLEX, ASRAMAM, KOLLAM-691 012.**
2. **THE COMMERCIAL TAX OFFICER, WORKS CONTRACT, COMMERCIAL TAXES, KOLLAM-691 012.**
3. **THE DISTRICT COLLECTOR, KOLLAM-691 001.**

BY GOVERNMENT PLEADER 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. 27964 OF 2015 (U)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORIGINAL RETURN FOR THE YEAR 2007-08 DATED 17.04.2008 FILED BY THE PETITIONER UNDER KVAT ACT, 2003.

EXT.P2: COPY OF THE REVISED RETURN FOR THE YEAR 2007-08 DATED 30.04.2008 FILED BY THE PETITIONER UNDER KVAT ACT, 2003.

EXT.P3: COPY OF THE AUDIT CERTIFICATE AND STATEMENTS IN FORM 13 & 13A DATED 12.12.2008 AND ENLISTING WORK WISE DETAILS OF CONTRACT RECEIPTS DURING THE YEAR 2007-08.

EXT.P4: COPY OF THE NOTICE FOR THE YEAR 2007-08 UNDER SECTION 25 OF THE KVAT ACT, 2003 DATED 28.02.2014 ISSUED BY 2ND RESPONDENT.

EXT.P5: COPY OF THE OBJECTION DATED 26.03.2014 FILED BY THE PETITIONER TO THE NOTICE FOR THE YEAR 2007-08 DATED 28.02.2014.

EXT.P6: COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2007-08 DATED 31.03.2014 ISSUED BY THE 2ND RESPONDENT.

EXT.P7: COPY OF THE DEMAND NOTICE FOR THE YEAR 2007-08 DATED 10.12.2014 ISSUED BY THE 2ND RESPONDENT.

EXT.P8: COPY OF THE APPEAL PETITION DATED 7.4.2014 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P8(a): COPY OF THE INTERLOCUTORY APPLICATION FOR STAY OF COLLECTION OF ARREARS FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P9: COPY OF THE ATTACHMENT NOTICE DATED 11.6.2015 ISSUED BY THE 3RD RESPONDENT.

EXT.P10: COPY OF THE STAY ORDER DATED 11.08.2015 IS ISSUED BY THE 1ST PETITIONER.

RESPONDENT'S EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AS

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.27964 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 on the files of the 2nd respondent. Against Ext.P6 assessment order, petitioner had preferred Ext.P8 appeal and Ext.P8 (a) stay petition before the 1st respondent. The 1st respondent has now passed Ext.P10 order on the stay petition directing the petitioner to remit Rs.3,00,000/- 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.P6 assessment 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, and in particular, has not adverted to the aspect of limitation.

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.P10 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.P10 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