IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 28220 of 2015 (R)

PETITIONER(S):

MERCY JOHN AGED 41 YEARS
PROPRIETRIX, M/S. MATHA COIR WEBBIING INDUSTRIES
CANAL WARD, ALAPPUZHA -

BY ADV. SRI.A.KRISHNAN

RESPONDENT(S):
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1. THE AGRICULTURAL INCOME TAX & COMMERCIAL TAX OFFICER
COLECTORATE, ALAPPUZHA - 688 001

2. DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, BAPPUJI NAGAR,
ASRAAMA, KOLLAM - 691 002

3. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES
ALAPPUZHA - 688 001

4. THE STATE OF KERALA REPRESENTED BY
THE SECRETARY, COMMERCIAL TAXES DEPARTMENT
THIRUVANANTHAPURAM - 695 001

R BY GOVERNMENT PLEADER, SRI. LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28220 of 2015 (R)

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APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	**TRUE COPY OF THE ASSESSMENT ORDER DATED 13.02.2015 FOR 2005-06.**
EXT.P2	**TRUE COPY OF THE DEMAND NOTICE DATED 13.02.2015.**
EXT.P3	**TRUE COPY OF THE APPEAL DATED 30.05.2015 FILED BEFORE THE 2ND RESPONDENT**
EXT.P4	**TRUE COPY OF THE STAY PETITION DATED 30.05.2015 FILED BEFORE THE 2ND RESPONDENT.**
EXT.P5	**TRUE COPY OF THE DELAY CONDONATION PETITION DATED 30.05.2015 FILED BEFORE THE 2ND RESPNODENT.**
EXT.P6	**TRUE COPY OF THE EARLY HEARING PETITION DATED 30.05.2015 FILED BEFORE THE 2ND RESPONDENT.**
EXT.P7	**TRUE COPY OF THE ORDER IN APPEAL DATED 14.12.2009 PASSED BY THE 2ND RESPONDENT.**
EXT.P7(a)	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DATED 07.12.2010 PASSED BY THE 1ST RESPONDENT.**
EXT.P8	**TRUE COPY OF THE ORDER IN SUO MOTO REVISION DATED 30.06.2014 PASSED BY THE 3RD RESPONDENT.**
EXT.P9	**TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 05.11.2014 IN WP(C) No.28283 OF 2014 (I)**
EXT.P10	**TRUE COPY OF THE STAY ORDER IN EXT.P4 DATED 11.08.2015 PASSED BY THE 2ND RESPONDENT.**

RESPONDENT'S EXHIBITS:-

-- **NIL**

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 28220 of 2015

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Dated this the 17th 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 2005-2006, the petitioner had preferred Ext.P3appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P4 stay petition and Ext.P5 delay condonation petition. The 2nd respondent has now passed Ext.P10 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. The petitioner also seeks permission to prefer an appeal against Ext.P8 Revision order on the ground of limitation.

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.P10 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.P10 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.

(iv) The prayer of the petitioner for permission to file an appeal against Ext.P8 Revision order for raising a plea of limitation is rejected taking note of subsequent events that took place as detailed in the writ petition.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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