

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C).No. 28981 of 2015 (W)

PETITIONER :

**C.CHANDRAN
PROPRIETOR, M/S. HARIVISHNU AGENCIES
MARKET JUNCTION, ALAPPUZHA – 1.**

BY ADV. SRI.A.KRISHNAN

RESPONDENT(S) :

- 1. THE COMMERCIAL TAX OFFICER
COLLECTORATE, ALAPPUZHA – 688 001.**
- 2. DEPUTY COMMISSIONER (APPEALS) II
COMMERCIAL TAXES, BAPPUJI NAGAR
ASRAAMAM, KOLLAM – 691 002.**
- 3. THE THASILDAR (REVENUE RECOVERY)
AMBALAPPUZHA TALUK, ALAPPUZHA – 688 001.**
- 4. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY
COMMERCIAL TAXES DEPARTMENT
THIRUVANANTHAPURAM – 695 001.**

R1 TO R4 BY GOVT. PLEADER SRI. LIJU V. STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE ASSESSMENT ORDER DATED 5.6.2015 FOR OCTOBER, 2013.
- EXT.P1(a) COPY OF THE ASSESSMENT ORDER DATED 5.6.2015 FOR DECEMBER, 2013.
- EXT.P1(b) COPY OF THE ASSESSMENT ORDER DATED 23.6.2015 FOR JANUARY, 2014.
- EXT.P2 COPY OF THE DEMAND NOTICE DATED 10.6.2015.
- EXT.P2(a) COPY OF DEMAND NOTICE DATED 19.6.2015.
- EXT.P2(b) COPY OF DEMAND NOTICE DATED 29.6.2015.
- EXT.P3 COPY OF THE APPEAL DATED 12.7.2015 FILED BEFORE THE 2ND RESPONDENT.
- EXT.P3(a) COPY OF THE APPEAL DATED 12.7.2015 FILED BEFORE THE 2ND RESPONDENT.
- EXT.P3(b) COPY OF THE APPEAL DATED 12.7.2015 FILED BEFORE THE 2ND RESPONDENT.
- EXT.P4 COPY OF STAY THE PETITION DATED 13.7.2015 IN EXT.P3 APPEAL.
- EXT.P4(a) COPY OF STAY PETITION DATED 13.7.2015 IN EXT.P3(a) APPEAL.
- EXT.P4(b) COPY OF STAY PETITION DATED 13.7.2015 IN EXT.P3(b) APPEAL.
- EXT.P5 COPY OF EARLY HEARING PETITION DATED 13.7.2015 IN EXT.P3 APPEAL.

(Contd...)

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EXT.P5(a) COPY OF EARLY HEARING PETITION DATED 13.7.2015 IN EXT.P3(a)
APPEAL.

EXT.P5(b) COPY OF EARLY HEARING PETITION DATED 13.7.2015 IN EXT.P3(b)
APPEAL.

EXT.P6 COPY OF THE COMMON ORDER DATED 25.8.2015.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 28981 of 2015

Dated this the 30th day of September, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Ext.P1 series of assessment orders for the assessment year 2015-2016, the petitioner had preferred Ext.P3 series of appeals before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P4 series of stay petitions. The 2nd respondent has now passed Ext.P6 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.

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.P6 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.P6 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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE