IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 29240 of 2015 (D)

PETITIONER:

M/S. ABB INDIA LIMITED, NOEL FOCUS,
6TH FLOOR, SEA PORT AIRPORT ROAD,
KAKKANAD, KOCHI, REPRESENTED BY ITS
ASSISTANT VICE PRESIDENT, MR.SANTHOSH KUMAR.

BY ADV. SMT.K.LATHA

RESPONDENT(S):
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1. **STATE OF KERALA, REPRESENTED BY**
   CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM - 695 001.

2. **ASSISTANT COMMISSIONER (WORKS CONTRACT),**
   O/O.THE DEPUTY COMMISSIONER,
   COMMERCIAL TAXES DEPARTMENT,
   ERNAKULAM, KOCHI-682018.

3. **THE DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, ERNAKULAM-682018.

4. **INSPECTING ASST.COMMISSIONER**
   COMMERCIAL TAXES, KAKKANAD,
   ERNAKULAM-682030.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 29240 of 2015 (D)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : THE TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2007-2008 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER DATED 28.11.2008.

EXT. P2 : THE TRUE COPY OF THIS CONDITIONAL STAY ORDER NO.KVATA 3568/2008 DATED 20.2.2009 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

EXT. P3 : THE TRUE COPY OF THE FIRST APPELLATE ORDER ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER DATED 4.12.2009 FOR THE YEAR 2007-2008.

EXT. P4 : THE TRUE COPY OF THE ASSESSMENT ORDER NO.32072097464/2007-2008 DATED 30.9.2014 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT. P5 : THE TRUE COPY OF THE APPEAL IN FORM 29 AND GROUNDS OF APPEAL FILED BY THE PETITIONER AGAINST THE P4 ASSESSMENT ORDER FOR THE YEARS 2007-2008.

EXT. P6 : THE TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED IN FORM 1 DATED 7.8.2015 ISSUED BY THE FOURTH RESPONDENT TO THE PETITIONER.

EXT. P7 : THE TRUE COPY OF THE STAY ORDER NO.KVATA.599/2015 DATED 3.9.2015 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.29240 of 2015

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Dated this the 29th day of September, 2015

J U D G M E N T

Against Ext.P4 assessment order, petitioner preferred Ext.P5 appeal before the 3rd respondent. Along with the appeal, the petitioner also preferred an application for stay. The 3rd respondent has now passed Ext.P7 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 Ext.P4 assessment order.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 3rd 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 Ext.P7 order, the 3rd 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.P7 order is quashed and the 3rd 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.

(iii) Recovery steps, if any, initiated against the petitioner shall be kept in abeyance till such time as fresh orders are passed by the 3rd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns