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. 29348 of 2015 (P)

PETITIONER :

JELLY SEBASTIAN
S/O. SEBASTIAN, AGED 42 YEARS
PROPRIETOR, M/S. VAZHAKKATTU ENTERPRISES
CHURCH ROAD, THIRUVAMPADY P.O.,
KOZHIKODE – 673 603.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S) :

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1. **THE COMMERCIAL TAX OFFICER**
   IVTH CIRCLE, KOZHIKODE – 673 001.

2. **THE ASSISTANT COMMISSIONER (APPEALS)**
   COMMERCIAL TAXES, KOZHIKODE – 673 001.

3. **THE VILLAGE OFFICER**
   THIRUVAMBADI VILLAGE, THAMARASSERY TALUK
   KOZHIKODE – 673 509.

4. **THE DEPUTY TAHSILDAR (REVENUE RECOVERY)**
   THAMARASSERY, KOZHIKODE – 673 509.

R1 TO R4 BY GOVT. 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:

Mn

...2/-

WP(C).No. 29348 of 2015 (P)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	:	**COPY OF THE ASSESSMENT ORDER DATED 11/9/2014 ALONG WITH DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2013-14.**
EXT.P2		**COPY OF THE APPEAL PETITION DT. 30-9-2014 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2013-2014.**
EXT.P3		**COPY OF THE CONDITIONAL STAY ORDER DATED 11.11.2014 PASSED BY THE 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2013-14.**
EXT.P4		**COPY OF THE DEMAND NOTICE IN FORM NO. 1 DATED 26.6.2015 FOR THE ASSESSMENT YEAR 2013-14 ISSUED BY THE 4TH RESPONDENT.**
EXT.P4(a)		**COPY OF THE DEMAND NOTICE IN FORM NO. 10 DATED 26.6.2015 FOR THE ASSESSMENT YEAR 2013-14 ISSUED BY THE 4TH RESPONDENT.**

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 29348 of 2015

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Dated this the 29th 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 2013-2014, the petitioner had preferred Ext.P2 appeal before the 2nd respondent. The 2nd respondent has now passed Ext.P3 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.P3 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.P3 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

das