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. 29694 of 2015 (J)

NAME AND ADDRESS OF PETITIONER(S) :

MUNEER, AGED 38 YEARS,
S/O.IBRAHIMKUTTY, " MUTHANISSERIL MARBLES",
VETTUVENI, HARIPPAD, ALAPPUZHA DISTRICT, PIN- 690 523,
RESIDING AT MUTTANISSERIL, PADA NORTH, KARUNAGAPPALLY,
KOLLAM.

BY ADV. SRI.P.V.VENUGOPAL

NAME AND ADDRESS OF RESPONDENT(S) :

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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM, PIN- 695 001.

2. DEPUTY COMMISSIONER (APPEALS) II,
   DEPARTMENT OF COMMERCIAL TAXES,
   COMMERCIAL TAX COMPLEX, ASHRAMAM P.O.,
   KOLLAM, PIN- 691 001.

3. ASSISTANT COMMISSIONER (ASSESSMENT),
   COMMERCIAL TAX OFFICE, SPECIAL CIRCLE,
   CIVIL STATION, ALAPPUZHA, PIN- 688 001.

4. COMMERCIAL TAX OFFICER,
   HARIPAD, PIN- 690 514.

5. INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, CHENGANNUR, PIN- 689 121.

BY GOVERNMENT 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:

Msd.

WP(C).No. 29694 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE ASSESSMENT ORDER NO.32041290734 DATED 21.07.2015 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE NOTICE OF DEMAND IN FORM NO.12 BEARING NO.41/2015-2016, DATED 21.07.2015 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE AUDIT REPORT OF ACCOUNTS AND BALANCE SHEET FOR THE ASSESSMENT YEAR 2012-2013 PRODUCED BEFORE SALES TAX AUTHORITY.

EXHIBIT P4: TRUE COPY OF AUDITED REPORT OF ACCOUNTS AND BALANCE SHEET FOR THE ASSESSMENT YEAR 2012-2013 DATED 27.02.2014 PRODUCED BEFORE INCOME TAX AUTHORITY.

EXHIBIT P5: TRUE COPY OF THE APPLICATION SEEKING REVISING RETURN FOR THE ASSESSMENT YEAR 2012-2013 DATED 29.04.2013 TO 4TH RESPONDENT.

EXHIBIT P6: TRUE COPY OF EXTRACT OF ADVANCE TAX PAYMENT FROM KVAT SITE OF PETITIONER VIDE REGISTERED DEALER TAX INDEX NUMBER (T.I.N) 320412 90734 INDICATING OUTSTANDING CREDIT OF RS.1,68,039/-

EXHIBIT P7: TRUE EXTRACT OF ANNUAL RETURN THE ASSESSMENT YEAR 2012-2013 OF DEALER TAX INDEX NUMBER (T.I.N) 320412 90734 OF PETITIONER.

EXHIBIT P8: TRUE COPY OF REPRESENTATION DATED 25.06.2015 IN REPLY TO NOTICE.

EXHIBIT P9: TRUE COPY OF MEDICAL CERTIFICATE AYURVEDIC TREATMENT FROM 10.06.2015 TO 25.07.2015 ISSUED BY NAVEENA AYURVEDA HOSPITAL, KARUNAGAPALLY TO THE PETITIONER.

EXHIBIT P10: TRUE COPY OF STATUTORY APPEAL MEMORANDUM BEARING NO.385 FILED BEFORE THE 2ND RESPONDENT DEPUTY COMMISSIONER (APPEALS) II.

EXHIBIT P11: COPY OF COMMON ORDER IN KVATA (ALPY) 383,384 & 385/15 DATED 13.08.2015 SERVED TO THE PETITIONER ON 20.08.2015 30% OF 4,64,425/ (RS.TAX RS.3,65,689/- + RS INTEREST RS.98,736/-)

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EXHIBIT P12: COPY OF R.R.NOTICE BEARING SL.NO.71/2015-16 DATED 22.08.2015 ISSUED BY 5TH RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.29694 of 2015

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Dated this the 30th day of September, 2015

J U D G M E N T

Against Ext.P1 assessment order, petitioner preferred Ext.P10 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred a stay petition. The 2nd respondent has now passed Ext.P11 order on the stay petition 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.P1 assessment order.

2. In the writ petition, the petitioner impugns the said conditional order 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 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.P11 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 **<u>Archana Agencies v Commercial Tax Officer - 2014 (2) KLT 715</u>** that an authority considering a stay petition is bound to give reasons even while granting conditional stay.

(ii) Ext.P11 order is quashed and the 2nd 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 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns