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. 29735 of 2015 (N)

NAME AND ADDRESS OF THE 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 THE RESPONDENT(S):

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1. STATE OF KERALA, REPRESENTED BY
   THE SECRETARY, TAX 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. ASSITANT COMMISSIONER (ASSESSMENT),
   COMMERCIAL TAX OFFICE, SPECIAL CIRLCE,
   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. 29735 of 2015 (N)

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.40/2015-2016, DATED 21.07.2015 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P3: TRUE COPY OF AUDIT REPORT FOR THE ASSESSMENT YEAR 2011-2012 VIDE "E" FILING ON 27.03.2013.

EXHIBIT P4: COPY OF THE APPLICATION DATED 06.05.2014 ACKNOWLEDGED BY 4TH RESPONDENT.

EXHIBIT P5: TRUE COPY OF REVISED AUDIT STATEMENT IN FORM 13 AND 13 A A PERTAINING TO MUTHANISSERIL MARBLES FOR THE ASSESSMENT YEAR 2011-2012.

EXHIBIT P6: TRUE COPY OF THE BALANCE SHEET DATED 12.06.2013 FOR THE ASSESSMENT YEAR 2011-2012 SUBMITTED BEFORE INCOME TAX AUTHORITY.

EXHIBIT P7: TRUE COPY OF EXTRACT OF DOWN LOADED FROM KVAT WEB SITE INDICATING ANNUAL RETURN FOR THE ASSESSMENT YEAR 2011-2012 OF REGISTERED DEALER TAX INDEX NUMBER (T.I.N)320412 90734.

EXHIBIT P8: TRUE COPY OF APPLICATION SEEKING REVISION RETURN FOR THE ASSESSMENT YEAR 2010-2011 DATED 09.05.2014 GIVEN TO THE 4TH RESPONDENT.

EXHIBIT P9: TRUE EXTRACT OF DOWN LOADED FROM KVAT SITE DOWN LOADED FROM KVAT WEB SITE FIGURING A TOTAL PAYMENT AMOUNT OF RS.33,75,064/-

EXHIBIT P10: TRUE COPY OF INVOICE NO.2368 DATED 12.12.2011 ISSUED BY "CORONA VITRIFIED PVT LTD." MORBI GUJARAT FOR AN AMOUNT OF RS.3,09,495/-.

EXHIBIT P11: TRUE COPY OF INVOICE NO.2368 DATED 12.12.2011 AND ADVANCE TAX UTILIZATION RECEIPT INDICATING SUCH PAYMENT RS.3,77,495/- AS ADVANCE TAX.

EXHIBIT P12: TRUE EXTRACT OF UP LOADED PURCHASE INVOICE FROM KVAT WEB SITE FOR THE OF MONTH DECEMBER 2011.

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EXHIBIT P13: TRUE COPY OF INVOICE NO.9222114026 DATED 02.11.2011 IN FAVOUR OF “H & R JOHNSON (INDIA) TRIVANDRUM.

EXHIBIT P14: TRUE COPY OF EXTRACT OF UP LOADED PURCHASE FROM KVAT WEB SITE FOR THE MONTH NOVEMBER 2011 OF “H & R JOHNSON (INDIA) TRIVANDRUM.

EXHIBIT P15: TRUE COPY OF REPRESENTATION DATED 25.06.2015 IN REPLY TO NOTICE.

EXHIBIT P16: TRUE COPY OF MEDICAL CERTIFICATE ISSUED BY NAVEENA AYURVEDA HOSPITAL, KARUNAGAPALLY.

EXHIBIT P17: TRUE COPY OF APPEAL MEMORANDUM IN APPEAL NO.384/15 DATED 13.08.2015.

EXHIBIT P18: TRUE COPY OF INTERIM ORDER IN APPEAL NO.384/15 DATED 13.08.2015.

EXHIBIT P19: TRUE COPY OF REVENUE RECOVERY NOTICE BEARING NO.RR.SI.NO.70/2015-16 DATED 22.08.2015 U/S 7 OF REVENUE RECOVERY ACT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.29735 of 2015

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Dated this the 30th day of September, 2015

<u>J U D G M E N T</u>

Against Ext.P1 assessment order, petitioner preferred Ext.P17 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred stay petition. The 2nd respondent has now passed Ext.P18 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.P18 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.P18 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