IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C).No. 30244 of 2015 (E)

PETITIONER(S):

M/S. SURVIVAL SYSTEMS INDIA,
(A DIVISION OF LITTLESILVER SOFTWARE INDIA PVT. LTD.),
ACHERIMADATHIL HOUSE NO.CC/56/227/A,
KONTHURUTHY, THEVARA,
ERNAKULAM - 682 013,
REPRESENTED BY ITS DIRECTOR VIJAY MADANLAL SHAH.

BY ADV. SRI.V.DEVANANDA NARASIMHAM.

RESPONDENT(S):

1. THE COMMERCIAL TAX OFFICER (WORK CONTRACT),
   COMMERCIAL TAXES,
   ERNAKULAM - 682 013.

2. THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES,
   ERNAKULAM - 682 013.

3. THE INSPECTING ASSISTANT COMMISSIONER (RR),
   COMMERCIAL TAXES, KAKKANAD,
   ERNAKULAM - 682 030.

BY GOVERNMENT PLEADERSRI.LIJU V. STEPHEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: TRUE COPY OF CONTRACT AGREEMENT DATED 22/02/11 EXECUTED BETWEEN PETITIONER AND THE PRESIDENT OF INDIA REPRESENTED BY THE PRINCIPAL DIRECTOR, NAVAL AIR STAFF, NEW DELHI.

EXT.P2: TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 12-13 DATED 04/06/2013 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P3: TRUE COPY OF COVERING LETTER CUM ACKNOWLEDGEMENT OF PAYMENT DATED 30/07/13 OF THE 1ST RESPONDENT.

EXT.P4: TRUE COPY OF THEQUARTERLY RETURN FILED FOR THE PERIOD FROM 01/07/2013 TO 30/09/2013 ALONG WITH PROOF OF E-PAYMENT DATED 21/10/13.

EXT.P5: TRUE COPY OF THE NOTICE DATED 07/08/14 ISSUED U/S.25(1) OF THE KVAT ACT BY 1ST RESPONDENT TO THE PETITIONER FOR 2013-14.

EXT.P6: TRUE COPY OF REPLY DATED 20/08/14 PREPARED BY THE PETITIONER DULY ACCEPTED BY 1ST RESPONDENT ON 16/09/14.

EXT.P7: TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2013-14 DATED 10/09/14 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P8: TRUE COPY OF THE APPEAL MEMORANDUM DATED 19/07/15 FILED BEFORE THE 2ND RESPONDENT BY THE PETITIONER.

EXT.P9: TRUE COPY OF THE INTERLOCUTORY APPLICATION FOR ABSOLUTE STAY DATED 19/07/15 SUBMITTED BEFORE 2ND RESPONDENT BY PETITIONER.

EXT.P10: TRUE COPY OF THE STAY ORDER DATED 10/09/15 ISSUED BY 2ND RESPONDENT TO THE PETITIONER FOR THE YEAR 2013-14.

EXT.P11: TRUE COPY OF THE APPLICATION FILED U/S. 66 OF THE KVAT ACT FOR THE YEAR 12-13 DATED 23/09/15 BEFORE 1ST RESPONDENT.

EXT.P12: TRUE COPY OF THE APPLICATION FILED U/S.66 OF THE KVAT ACT, FOR THE YEAR 2013-14 DATED 23/09/15 BEFORE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.30244 of 2015

....

Dated this the 6th day of October, 2015

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

Against Ext.P7 assessment order, petitioner preferred Ext.P8 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P9 stay petition. The 2nd respondent has now passed Ext.P10 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.P7 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.P10 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.P10- 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