

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 30543 of 2015 (P)

PETITIONER(S):

**M/S. ALLEPPY LAKES AND LAGOONS TOURISM (P) LTD.,
ALAPPUZHA, REPRESENTED BY MANAGING DIRECTOR.**

**BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.ROSIE ATHULYA JOSEPH
SMT.O.A.NURIYA
KUM.SOUMYA PRAKASH
KUM.MEKHALA M.BENNY**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER (LT),
ALAPPUZHA-688001.**
- 2. THE KERALA VALUE ADDED TAX TRIBUNAL,
KOTTAYAM-686001.**
- 3. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
TAXES, THIRUVANANTHAPURAM-695001.**

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2004-05 ISSUED BY THE R1**
- P2: COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2005-06 ISSUED BY THE R1**
- P3: COPY OF THE APPELLATE ORDER FOR THE A.Y.2004-05**
- P4: COPY OF THE APPELLATE ORDER FOR THE A.Y.2005-06**
- P5: COPY OF THE APPELLATE FILED BY THE PETITIONER FOR THE A.Y.2004-05**
- P6: COPY OF THE APPELLATE FILED BY THE PETITIONER FOR THE A.Y.2005-06**
- P7: COPY OF STAY PETITION FILED BY THE PETITIONER FOR THE A.Y.2005-05**
- P8: COPY OF STAY PETITION FILED BY THE PETITIONER FOR THE A.Y.2005-06**
- P9: COPY OF THE COMMON ORDER DATED 30/6/15 PASSED BY THE R2 FOR THE A.Y.2004-05 & 2005-06.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.30543 of 2015
.....

Dated this the 8th day of October, 2015

J U D G M E N T

Against Exts.P3 and P4 first appellate orders, petitioner preferred Exts.P5 and P6 second appeals before the 2nd respondent. Along with the appeals, the petitioner had also preferred Exts.P7 and P8 stay petitions. The 2nd respondent has now passed Ext.P9 order on the stay petition directing the petitioner to pay 1/3rd of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Exts.P3 and P4 first appellate orders.

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.P9 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. It is also relevant to note that in Ext.P9 order, the 2nd respondent does not consider the specific plea of limitation that was raised by the petitioner in the appeals.

(ii) Ext.P9 order is quashed and the 2nd respondent is directed to consider and pass final orders in the Appeals preferred by the petitioner, within two 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 orders are passed by the 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

