IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 30879 of 2015 (H)

PETITIONER(S) :

MOIDU HAJI,
PROPRIETOR, M/S.KAMBIL AGENCIES,
KOLANCHERY, KANNUR- 670 009.

BY ADV. SRI.DALE P.KURIEN

RESPONDENT(S) :
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1. COMMERCIAL TAX OFFICER-II,
   COMMERCIAL TAXES, TALIPARAMBA, KANNUR- 670 005.

2. THE ASSISTANT COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, MINI BYE-PASS, ERANJIPALAM,
   KOZHIKODE- 650 004.

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 30879 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1:	**TRUE COPY OF THE ASSESSMENT ORDER DATED 31.01.2015.**
EXT.P2:	**TRUE COPY OF THE APPEAL MEMORANDUM DATED 25.03.2015.**
EXT.P3:	**TRUE COPY OF STAY PETITION DATED 25.03.2015.**
EXT.P4:	**TRUE COPY OF THE STAY ORDER DATED 25.08.2015.**
EXT.P5:	**TRUE COPY OF THE JUDGMENT IN W.A.NO.1641/2008 DATED 06.08.2008.**
EXT.P6:	**TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.28573/2015 DATED 22.09.2015.**
EXT.P7:	**TRUE COPY OF THE FORM C DECLARATION OF TILES, NO.321202/IC/15276/2012 FOR PURCHASE FROM SHREEJI CERAMIC INDUSTRIES, GUJARAT, DATED 07.04.2014.**
EXT.P7(A):	**TRUE COPY OF THE FORM C DECLARATION OF TILES, NO.321202/IC/15279/2012 FOR PURCHASE FROM GLARE CREAMIC, NATIONAL HIGHWAY, MORBI, GUJARAT, DATED 07.04.2014.**
EXT.P8:	**TRUE COPY OF THE RETAIL PRICE INVOICE OF TILES FROM SHREEJI CERAMIC INDUSTRIES, GUJARAT, DATED 10.04.2012.**
EXT.P8(A):	**TRUE COPY OF THE RETAIL PRICE INVOICE OF TILES FROM GLARE CERAMIC, NATIONAL HIGHWAY, MORBI, GUJARAT, DATED 10.04.2014.**
EXT.P9:	**TRUE COPY OF THE AUDITED PROFITS & LOSS ACCOUNTS DATED 19.03.2015.**
EXT.P10:	**TRUE COPY OF THE AUDITED BALANCE SHEET DATED 19.03.2015.**
EXT.P11:	**TRUE COPY OF THE AUDITED RETURN.**
EXT.P11(A):	**TRUE COPY OF THE AUDIT CERTIFICATE IN FORM NO.13 DATED 19.03.2015.**
EXT.P11(B):	**TRUE COPY OF THE AUDIT CERTIFICATE IN FORM NO.13A DATED 19.03.2015.**
EXT.P12:	**TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER SWORN BY THE ACCOUNTANT DATED 29.09.2015.**

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EXT.P13: **TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.18427/2012 DATED 09.08.2012.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 30879 of 2015

Dated this the 12th day of October, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Ext.P1 assessment order for the assessment year 2012-2013, the petitioner had preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P3 stay petition. The 2nd respondent has now passed Ext.P4 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.P4 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.P4 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