

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

WP(C).No. 32296 of 2015 (J)

PETITIONER:

**M/S.ESSAR JEWELLERS,
DOOR NO.TC.VIII/272, THOTTAN PETTA,
EAST FORT, THRISSUR - 680 005,
REPRESENTED BY ITS MANAGING PARTNER,
SRI.VARGHEESE VADAKKAN.**

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):

- 1. ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, SPECIAL CIRCLE,
POOTHOL, THRISSUR - 680 004.**
- 2. DEPUTY COMMISSIONER(APPEALS),
COMMERCIAL TAXES, ERNAKULAM,
COCHIN - 682 015.**
- 3. DEPUTY TAHSILDAR(REVENUE RECOVERY),
THRISSUR TALUK, THRISSUR - 680 020.**

BY GOVERNMENT PLEADER SMT.LILLY.K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF ASSESSMENT ORDER DATED 31.7.2015 FOR THE YEAR 2013-14 COMPLETED BY 1ST RESPONDENT, AFTER MAKING HUGE ADDITIONS TO THE CONCEDED TURNOVER.
- EXT. P2 : TRUE COPY OF APPEAL DATED 7.9.2015, SUBMITTED BY PETITIONER BEFORE 2ND RESPONDENT, AGAINST EXT. P1 ASSESSMENT.
- EXT. P3 : TRUE COPY OF STAY PETITION DATED 7.9.2015, SUBMITTED ALONG WITH EXT. P2 APPEAL, BEFORE 2ND RESPONDENT.
- EXT. P4 : TRUE COPY OF EARLY HEARING PETITION DATED 7.9.2015 SUBMITTED ALONG WITH EXT. P2 APPEAL, BEFORE 2ND RESPONDENT.
- EXT. P5 : TRUE COPY OF MECHANICAL CONDITIONAL STAY ORDER DATED 9.9.2015 ISSUED TO PETITIONER BY 2ND RESPONDENT IN EXT. P3 STAY PETITION, DIRECTING TO SATISFY 30% OF EXT. P1 DEMAND, WITHOUT CONSIDERING ANY OF THE CONTENTIONS RAISED.
- EXT. P6 : TRUE COPY OF REVENUE RECOVERY NOTICE IN FORM NO.1 DATED 18.9.2015 U/S.7 OF THE RR ACT, ISSUED TO PETITIONER BY 3RD RESPONDENT, PURSUANT TO EXT. P1 DEMAND.
- EXT. P7 : TRUE COPY OF CASH RECEIPT NO.64601-6460008 DATED 7.10.2015 FOR RS.12,25,716/- ISSUED BY 3RD RESPONDENT TO THE PETITIONER, WHICH IS MORE THAN 30% OF THE DISPUTED DEMAND.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.32296 of 2015

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Dated this the 21st day of October, 2015

J U D G M E N T

Against Ext.P1 assessment order under the Kerala Value Added Tax Act, petitioner 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.P5 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 Exts.P5 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) Exts.P5 order is quashed. Taking note of the submission of counsel for the petitioner that more than 30% of the amounts confirmed against him by Ext.P1 assessment order has been paid by the petitioner, there will be a direction to the 2nd respondent to consider and pass orders on Ext.P2 appeal within a period of two weeks from the date of receipt of a copy of this judgment, after hearing the petitioner.

(iii) I make it clear that, coercive steps for recovery of demand confirmed against the petitioner by Ext.P1 assessment order 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

