IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 32461 of 2015 (G)

PETITIONER :

PRINCE EDASSERY, PROPRIETOR,
M/S.GEO AGENCIES, 41/1070, CHITOOR ROAD,
ERNAKULAM, COCHIN-682 011

BY ADV. SRI.TOMSON T.EMMANUEL

RESPONDENT(S):
----

1. **COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAXES, 2ND CIRCLE,
   ERNAKULAM, COCHIN-682 018.

2. **ASSISTANT COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, ERNAKULAM, COCHIN-682 015

3. **INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, KAKKANAD, COCHIN-682 030

4. **COMMISSIONER OF COMMERCIAL TAXES, TAX TOWER,**
   KARAMANA.P.O., THIRUVANANTHAPURAM-695 022

BY GOVERNMENT PLEADER SMT. LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.324612015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ANNUAL E-RETURN DATED 04/07/2014 FOR THE YEAR 2012-13 SUBMITTED BY THE PETITIONER BEFORE 1ST RESPONDENT

P2 COPY OF THE ORDER DATED 28/04/2015 FOR THE YEAR 2012-13 COMPLETED BY 1ST RESPONDENT, ON THE BASIS OF MISMATCH IN PURCHASE DISALLOWING INPUT TAX CREDIT ON PURCHASE MADE FROM ONE OF THE SUPPLIER.

P3 COPY OF THE APPEAL DATED 15/08/2015 SUBMITTED BY PETITIONER BEFORE 2ND RESPONDENT, AGAINST EXT.P2 ASSESSMENT.

P4 COPY OF THE STAY PETITION DATED 15/08/2015 SUBMITTED ALONG WITH EXT.P3 APPEAL, BEFORE 2ND RESPONDENT

P5 COPY OF THE MECHANICAL CONDITIONAL STAY ORDER DATED 24/08/2015 ISSUED TO PETITIONER BY 2ND RESPONDENT IN EXT.P4 STAY PETITION, DIRECTING TO SATISFY 30% OF EXT.P2 DEMAND, WITHOUT CONSIDERING ANY OF MY CONTENTIONS RAISED.

P6 COPY OF THE CIRCULAR NO.C1-45370/09/CT DATED 16/11/2009 ISSUED BY 4TH RESPONDENT, WITH A DIRECTING TO FOR PROPER VERIFICATION OF BOOKS OF ACCOUNTS PRIOR TO DISALLOWING INPUT TAX CREDIT, ON THE BASIS OF MISMATCH

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.
==
W.P.(C). No. 32461 of 2015
==
Dated this the 27th day of October, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Ext.P2 assessment order for the assessment year 2012-2013, the petitioner had preferred Ext.P3 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P4 stay petition. The 2nd respondent has now passed Ext.P5 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.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) Ext.P5 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 /27.10.15