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. 32566 of 2015 (U)

PETITIONER :

M/S.SIMPLEX INFRASTRUCTURE LTD,
HIG-19, SURABHI NAGAR, KAKKANAD, KOCHI,
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
MR.S.B.DAS.

BY ADVS.SRI.A.KUMAR
SMT.G.MINI

RESPONDENT(S):
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1. **THE DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, ERNAKULAM-682 016

2. **THE ASSISTANT COMMISSIONER (WC),**
   COMMERCIAL TAXES, ERNAKULAM-682 016

BY GOVERNMENT PLEADER SMT. K.T.LILLY

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.32566/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ASSESSMENT ORDER DATED 30/7/2015

P2 COPY OF THE MEMORANDUM OF APPEAL DATED 4/9/2015

P3 COPY OF THE APPLICATION FOR STAY DATED 4/9/2015

P4 COPY OF THE ORDER DATED 07/10/2015

P5 COPY OF THE REVISED ASSESSMENT ORDER FOR THE YEAR 1996-97 DATED 22/11/2014

P6 COPY OF THE REVISED ASSESSMENT ORDER FOR THE YEAR 1997-98 DATED 06/09/2007

P7 COPY OF THE REVISED ASSESSMENT ORDER FOR THE YEAR 1998-99 DATED 06/09/2007

P8 COPY OF THE APPELLATE ORDER FOR THE ASSESSMENT YEARS 2001-02 TO 2003-04 DATED 30/06/2008

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32566 OF 2015 (U)

Dated this the 27th day of October, 2015

J U D G M E N T

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the 2nd respondent. Against Ext.P1 assessment order, petitioner had preferred Ext.P2 appeal and Ext.P3 stay petition before the 1st respondent. The 1st respondent has now passed Ext.P4 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 1st 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.

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 1st 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 1st respondent is directed to reconsider the matter and pass fresh orders in the stay petition filed by the petitioner, within two months 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 1st respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/27/10/15