IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 32932 of 2015 (N)

PETITIONER(S) :

M/S.WILTON WEAVERS (P) LTD.,
SAKTHEESWARAM JUNCTION, CHERTHALA,
REPRESENTED BY ITS MANAGING DIRECTOR,
ARUN PRASAD, S/O.PRASAD, AGED 47 YEARS.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN
SMT.UMMUL FIDA

RESPONDENT(S) :

----

1. THE COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES DEPARTMENT, CHERTHALA- 638 524.

2. THE DEPUTY COMMISSIONER (APPEALS)-II,
   COMMERCIAL TAXES, KOLLAM- 691 001.

3. THE INSPECTING ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES DEPARTMENT, ALAPPUZHA- 688 001.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 32932 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: **A TRUE COPY OF THE ASSESSMENT ORDER DATED 30.07.2015 ALONG WITH DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2013-14.**

EXHIBIT P2: **A TRUE COPY OF THE APPEAL PETITION DATED 25.08.2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2013-14.**

EXHIBIT P3: **A TRUE COPY OF THE STAY PETITION DATED 25.08.2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2013-14.**

EXHIBIT P4: **A TRUE COPY OF THE REVISED STAY PETITION DATED 09.09.2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2013-14.**

EXHIBIT P5: **A TRUE COPY OF THE CONDITIONAL STAY ORDER DATED 09.09.2015 PASSED BY THE 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2013-14.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32932 OF 2015 (N)

Dated this the 29th day of October, 2015

<u>J U D G M E N T</u>

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the 1st respondent. Against Ext.P1 assessment order, petitioner had preferred Ext.P2 appeal before the 2nd respondent. Along with Ext.P2 appeal, the petitioner has also filed Exts.P3 and P4 stay petitions before the 2nd respondent. The 2nd respondent has now passed Ext.P5 order on the stay petitions directing the petitioner to pay 35% 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 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.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 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 2nd respondent, as directed above, and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/29/10/15