IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 33214 of 2015 (B)

PETITIONER :

R. VIJAYAN PILLAI, AGED 60 YEARS,
S/O. KUNJIRAMA PILLAI, UTHRAM MEDAMUKKU,
ERUVA, KAYAMKULAM P.O., PIN - 690502,
PROPRIETOR - M/S. BEENA STEEL CORPORATION, KAYAMKULAM

BY ADVS.SRI.P.A.ABDUL JABBAR
SRI.H.ABDUL LATHIEF

RESPONDENTS :

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1. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, CHENGANNUR, PIN - 689121.

2. DY. COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOLLAM PIN - 691002.

3. ASST. COMMISSIONER (ASSMT.) SPECIAL CIRCLE,
COMMERCIAL TAX OFFICE, ALAPPUZHA DISTRICT - PIN - 690502.

BY GOVERNMENT PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 33214 of 2015 (B)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE ASSESSMENT ORDER NO. 32040230095/2013-14 ISSUED BY THE R3 ALONG WITH DEMAND NOTICE.

P2: COPY OF THE PRE ASSESSMENT NOTICE ISSUED BY THE R3 TO THE PETITIONER.

P3: COPY OF THE REPLY ISSUED BY THE PETITIONER TO THE P2 NOTICE.

P4: COPY OF THE INTERIM ORDER PASSED IN APPEAL NO. KVAA(ALPY) 463/2015 BY THE R2.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.33214 of 2015

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Dated this the 2nd day of November, 2015

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

Against Ext.P1 assessment order under the Kerala Value Added Tax Act, petitioner preferred appeal before the 2nd respondent. Along with the appeal, the petitioner has also preferred a stay petition. The 2nd 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 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 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 petition, within one month from the date of receipt of a copy of this judgment after hearing the petitioner.

(iii) Recovery steps, if any, 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

mns/02.11.15