

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).NO. 33809 OF 2015 (A)

PETITIONER(S) :

MADAKKARA BUILDING MATERIALS
MANUFACTURING INDUSTRIAL CO-OPERATIVE SOCIETY LTD.,
REGISTRATION NO.IND © 252
VALAPATTANAM, P.O.VALAPATTANAM
KANNUR DISTRICT
REPRESENTED BY ITS SECRETARY
BY ADV. SRI.P.U.SHAILAJAN

RESPONDENT(S) :

1. COMMERCIAL TAX OFFICER,
II CIRCLE
KANNUR-670001
2. ASSISTANT COMMISSIONER (APPEAL)
COMMERCIAL TAXES
KOZHIKODE 673001

BY GOVERNMENT PLEADER SRI.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE NOTICE DATED 2.7.2014 ISSUED BY THE 1ST
RESPONDENT RECEIVED BY THE PETITIONER ON 30.09.2014

EXT.P2: TRUE COPY OF THE REPLY TO EXHIBIT P1 DATED 7.10.2014 SENT BY
PETITIONER

EXT.P3: TRUE COPY OF THE ORDER FROM THE FIRST RESPONDENT DATED
22.09.2014 RECEIVED BY PETITIONER ON 8.7.2015

EXT.P4: TRUE COPY OF THE APPEAL FILED BY PETITIONER BEFORE THE 2ND
RESPONDENT

EXT.P5: TRUE COPY OF THE STAY PETITION FILED ALONG WITH EXHIBIT P4

EXT.P6: TRUE COPY OF THE ORDER DATED 30.09.2015 OF THE 2ND RESPONDENT

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.33809 of 2015

.....
Dated this the 6th day of November, 2015

J U D G M E N T

Against Ext.P3 assessment order, petitioner preferred Ext.P4 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P5 stay petition. The 2nd respondent has now passed Ext.P6 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.P3 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.P6 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.P6 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