IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 33827 of 2015 (C)

PETITIONER:

M/S.NIRMAL ASSOCIATES,
MINI BYEPASS ROAD, ERANHIPPALAM,
CALICUT-673 006, KOZHIKODE DISTRICT,
REPRESENTED BY ITS PARTNER K.BALAKRISHNAN.

BY ADVS.SRI.RAJESH NAMBIAR
SMT.SINDHU K.NAMBIAR

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER,
   3RD CIRCLE, KOZHIKODE-673 001.

2. DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, KOZHIKODE, PIN-673 001.

3. SALES TAX OFFICER,
   O/O. DEPUTY COMMISSIONER,
   COMMERCIAL TAXES DEPARTMENT,
   KOZHIKODE, PIN-673 001.

BY GOVERNMENT PLEADER SRI.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 33827 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1- **TRUE COPY OF THE JUDGMENT IN WPC 7963 OF 2015 DATED 18-03-2015.**

P2- **TRUE COPY OF THE OBJECTION TO THE PRE-ASSIGNEMENT NOTICE FOR THE YEAR 2008-09.**

P3- **TRUE COPY OF THE OBJECTION TO THE PRE-ASSIGNEMENT NOTICE FOR THE YEAR 2009-10.**

P4- **TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2008-2009 DATED 31-08-2015.**

P5- **TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2009-2010 DATED 31-08-2015.**

P6- **TRUE COPY OF THE APPEAL FILED DATED 05-10-2015 AS AGAINST EXHIBIT P4 ORDER.**

P7- **TRUE COPY OF THE APPEAL FILED DATED 05-10-2015 AS AGAINST EXHIBIT P5 ORDER.**

P8- **TRUE COPY OF THE STAY PETITION FILED IN EXHIBIT P7 APPEAL.**

P9- **TRUE COPIES OF THE STAY PETITION FILED IN EXHIBIT P7 APPEAL.**

P10- **TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 21-10-2015.**

P11- **TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 21-10-2015.**

P12- **TRUE COPY OF THE COMMON ORDER DATED 27-10-2015 IN EXHIBIT P8 AND P9 STAY PETITIONS.**

RESPONDENT(S)' EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.33827 OF 2015 (C)

Dated this the 9th day of November, 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 1st respondent. Against Exts.P4 and P5 assessment orders, petitioner had preferred Exts.P6 and P7 appeals and Exts.P8 and P9 stay petitions before the 2nd respondent. The 2nd respondent has now passed Ext.P12 order on the stay petitions directing the petitioner to pay 10% of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Exts.P4 and P5 assessment orders.

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.P12 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.P12 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 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/9/11/15