IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).NO. 34121 OF 2015 (M)

PETITIONER(S):

M/S. C.MAMOOTTY AND COMPANY
O.V.ROADK THALASSERY
REPRESENTED BY ITS MANAGING PARTNER, C.FAZIL.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT(S):

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1. THE INTELLIGENCE OFFICER
(INVESTIGATION BRANCH)
DEPARTMENT OF COMMERCIAL TAXES, KANNUR-670004.

2. THE COMMISSIONER OF COMMERCIAL TAXES
TAX TOWERS, KILLIPPALAM, KARAMANA P.O.
THIRUVANANTHAPURAM-695002.

BY GOVERNMENT PLEADER SRI.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 34121 OF 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF THE PENALTY ORDER FOR THE YEAR 2012-13 DT.3-9-2014 PASSED BY 1ST RESPONDENT.

P2 : COPY OF THE ORDER PASSED BY THE DEPUTY COMMISSIONER, KANNUR, DT.9-7-2015.

P3 : COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DT.3-8-2015.

P4 : COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DT.3-8-2015.

P5 : COPY OF THE STAY ORDER PASSED BY 2ND RESPONDENT DT.19-10-2015.

P6 : COPY OF THE DEMAND NOTICE IN FORM NO.12 ISSUED BY 1ST RESPONDENT DT.3-9-2014.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.34121 of 2015

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Dated this the 12th day of November, 2015

J U D G M E N T

Against Ext.P1 penalty order under the Kerala Value Added Tax Act, the petitioner preferred Ext.P3 revision before the 2nd respondent. Along with the revision, the petitioner had also preferred Ext.P4 stay petition. The 2nd respondent has now passed Ext.P5 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 penalty 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.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, 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/12.11.15