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. 34178 of 2015 (V)

PETITIONER:

M/S.TARA FOODS,
EXPORTERS & IMPORTERS,
CANTONMENT, KOLLAM,
REPRESENTED BY ITS MANAGING PARTNER,
NARAYANAN BHARATHAN.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:
----

1. **ASST.COMMISSIONER-II,**
   COMMERCIAL TAXES SPECIAL CIRCLE,
   KOLLAM - 691001.

2. **DEPUTY COMMISSIONER(APPEALS),**
   DEPARTMENT OF COMMERCIAL TAXES,
   KOLLAM - 691001.

BY GOVERNMENT PLEADER SMT.LILLY.K.T.

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

mbr/

WP(C).No. 34178 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1:- COPY OF ASSESSMENT ORDER FOR THE YEAR 2010-11 ISSUED BY THE IST RESPONDENT TO THE PETITIONER DTD 3/7/2014.

P2:- COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD 22/7/2014.

P3:- COPY OF STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD 22/7/2014.

PP4:- COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD 6/6/2015.

P5:- COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD 19/10/2015.

P6:- COPY OF JUDGMENT IN WPC NO 24845/14 OF THIS HON'BLE COURT.

P6(A):- COPY OF JUDGMENT IN WPC NO 34040/14 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

-- -- -- -- -- -- -- -- -- -- -- -- --

W.P.(C) No.34178 of 2015

-- -- -- -- -- -- -- -- -- -- -- -- --

Dated this the 12th day of November 2015

<u>JUDGMENT</u>

Against Ext.P1 Assessment order, petitioner preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P3 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 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.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. Considering that in similar cases, this Court has already granted an unconditional stay during the pendancy of the appeals, there will be a direction to the 2nd respondent to hear Ext.P2 appeal preferred by the petitioner on merits, after hearing the petitioner.

(iii) It is made clear that coercive steps for recovery of amounts confirmed against the petitioner by Ext.P1 assessment order, shall be kept in abeyance till such time as fresh orders are passed by the 2nd respondent in the appeal as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/