

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 34254 of 2015 (F)

PETITIONER :

**RAINBOW METALS,
T.D. ROAD, ERNAKULAM,
(REPRESENTED BY THE PARTNER SRI.K.M.AHAMED IQBAL)**

**BY ADVS.SRI.K.N.SREEKUMARAN
SMT.V.PSEENA DEVI**

RESPONDENT(S):

- 1. COMMERCIAL TAX OFFICER, 2ND CIRCLE,
ERNAKULAM, KOCHI-682 018**
- 2. ASSISTANT COMMISSIONER (APPEALS),
O/O. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM-682 015**
- 3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM-682 015**

BY GOVERNMENT PLEADER SMT. LILLY.K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE ASSESSMENT ORDER NO.32070350632/2010-11 DATED 2/4/2014 ISSUED BY THE 1ST RESPONDENT**
- P2 COPY OF THE ASSESSMENT ORDER NO.32070350632/2011-12 DATED 21/4/2015 ISSUED BY THE 1ST RESPONDENT**
- P3 COPY OF THE EXTRACT OF LEDGER ACCOUNT AND OTHER ENCLOSURES PRODUCED FOR 2010-11**
- P4 COPY OF THE EXTRACT OF LEDGER ACCOUNT AND OTHER ENCLOSURES PRODUCED FOR 2011-12**
- P5 COPY OF THE APPEAL AGAINST EXT.P1 FILED BEFORE THE 2ND RESPONDENT ON 5/5/2015**
- P5(A) COPY OF THE STAY APPLICATION FILED IN EXT.P3 APPEAL BEFORE THE 2ND RESPONDENT ON 5/5/2015**
- P5(B) COPY OF THE EARLY APPLICATION FILED IN EXT.P3 APPEAL BEFORE THE 2ND RESPONDENT ON 5/5/2015**
- P6 COPY OF THE APPEAL AGAINST EXT.P2 FILED BEFORE 2ND RESPONDENT ON 5/5/2015**
- P6(A) COPY OF THE STAY APPLICATION FILED IN EXT.P4 APPEAL BEFORE 2ND RESPONDENT 5/5/2015**
- P6(B) COPY OF THE EARLY APPLICATION FILED IN EXT.P4 APPEAL BEFORE 2ND RESPONDENT ON 5/5/2015**
- P7 COPY OF THE DEMAND NOTICE BEARING NO.A5-1908/15 DATED 28/7/2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER**
- P8 COPY OF THE DEMAND NOTICE BEARING NO.A5-1907/15 DATED 28/7/2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.**
- P9 COPY OF THE COMMON STAY ORDER ISSUED BY THE 2ND RESPONDENT PER ORDER NO.KVATA 1060 & 1061/2015 DATED 1/9/2015 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT'S EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.34254 of 2015

Dated this the 13th day of November 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the 1st respondent. Against Exts. P1 and P2 Assessment orders, petitioner preferred Exts.P5 and P6 appeals before the 2nd respondent. Along with the appeals,the petitioner had also preferred Exts.P5(a) and P6(a) stay petitions. The 2nd respondent has now passed Ext.P9 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 Exts.P1 and P2 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 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.P9 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.P9 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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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