

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936**

**WP(C).No. 34702 of 2014 (K)**  
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**PETITIONER(S):**  
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**ANUJ A.,  
PROPRIETOR, UNIVERSAL EXPORTS, KILIKOLLOOR,  
KOLLAM DISTRICT, PIN - 691 004.**

**BY ADV. SRI.MOHAMMED RAFIQ**

**RESPONDENT(S):**  
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- 1. THE DEPUTY COMMISSIONER (APPEALS) - I,  
COMMERCIAL TAXES, KOLLAM- 691 002.**
- 2. THE ASSISTANT COMMISSIONER (AUDIT ASSESSMENT),  
COMMERCIAL TAXES, KOLLAM - 691 002.**
- 3. THE ASSISTANT COMMISSIONER (ASSESSMENT) - I,  
SPECIAL CIRCLE, COMMERCIAL TAXES, KOLLAM- 691 002.**
- 4. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),  
KOLLAM - 691 001.**
- 5. THE STATE OF KERALA,  
REPRESENTED BY THE SECRETARY,  
COMMERCIAL TAXES DEPARTMENT, TRIVANDRUM- 695 001.**

**BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

APPENDIX

PETITIONER(S)' EXHIBITS  
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EXHIBIT-P1-THE TRUE COPY OF THE ASSESSMENT ORDER DATED 29/02/2008  
RELATING TO THE PERIOD 04/2007 TO 06/2007 PASSED BY THE  
2ND RESPONDENT.

EXHIBIT-P2-THE TRUE COPY OF THE ASSESSMENT ORDER DATED 29/02/2008  
RELATING TO THE PERIOD 07/2007 TO 09/2007 PASSED BY THE  
2ND RESPONDENT.

EXHIBIT-P3-THE TRUE COPY OF THE ORDER NO. 0202 C100275/07-08  
DATED 06/03/2008 PASSED BY THE 3RD RESPONDENT.

EXHIBIT-P4-THE TRUE COPY OF THE NOTIFICATION NO. S.O 464(3) PUBLISHED IN  
THE GAZETTE OF INDIA PART -II- SECTION 3 SUB SECTION (II)  
DATED 29/03/2007.

EXHIBIT-P5-THE TRUE COPY OF THE ASSESSMENT ORDER DATED 29/02/2008  
RELATING TO THE PERIOD OF 09/2007 PASSED BY THE  
1ST RESPONDENT UNDER SECTION 24 OF THE KERALA VALUE ADDED  
TAX ACT,2003.

EXHIBIT-P6-THE TRUE COPY OF THE ANNUAL RETURN DATED 10/05/2008 RELATING  
TO THE RETURN PERIOD FROM 01/04/2007 TO 31/03/2008 FILED BY THE  
PETITIONER.

EXHIBIT-P7-THE TRUE COPY OF THE APPEAL DATED 21/10/2014 IN RELATION TO THE  
RETURN PERIOD 04/2007 TO 06/2007 FILED BY THE PETITIONER BEFORE  
THE 1ST RESPONDENT.

EXHIBIT-P8-THE TRUE COPY OF THE APPEAL DATED 21/10/2014 IN RELATION TO THE  
RETURN PERIOD 07/2007 TO 09/2007 FILED BY THE PETITIONER BEFORE  
THE 1ST RESPONDENT.

EXHIBIT-P9-THE TRUE COPY OF THE APPEAL DATED 21/10/2014 IN RELATION TO THE  
RETURN PERIOD 10/2007 TO 12/2007 FILED BY THE PETITIONER BEFORE  
THE 1ST RESPONDENT.

EXHIBIT-P10-THE TRUE COPY OF THE STAY APPLICATION DATED 21/10/2014 IN  
RELATION TO THE RETURN PERIOD 04/2007 TO 06/2007 FILED BY THE  
PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT-P11-THE TRUE COPY OF THE STAY APPLICATION DATED 21/10/2014 IN  
RELATION TO THE RETURN PERIOD 07/2007 TO 09/2007 FILED BY THE  
PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT-P12-THE TRUE COPY OF THE STAY APPLICATION DATED 21/10/2014 IN  
RELATION TO THE RETURN PERIOD 10/2007 TO 12/2007 FILED BY THE  
PETITIONER BEFORE THE 1ST RESPONDENT.

Msv/

**EXHIBIT-P13-THE TRUE COPY OF THE RETURN DATED 04/11/2014 RELATING TO THE PERIOD FROM 01/10/2014 TO 31/10/2014 FILED BY THE PETITIONER.**

**EXHIBIT-P14-THE TRUE COPY OF THE ORDER NO. KVATA (KLM) 940/14941/14&942/14 DATED 24/10/2014 PASSED BY THE 1ST RESPONDENT.**

**EXHIBIT-P15-THE TRUE COPY OF THE DEMAND NOTICE IN FORM 1 BEARING NUMBER 2014/1655/2/300 DATED 27/06/2014 ISSUED BY THE 4TH RESPONDENT UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT, 1968.**

**EXHIBIT-P16-THE TRUE COPY OF THE DEMAND NOTICE IN FORM 10 BEARING NUMBER 2014/1655/2/300 DATED 27/06/2014 ISSUED BY THE 4TH RESPONDENT UNDER SECTION 34 OF THE KERALA REVENUE RECOVERY ACT, 1968.**

**EXHIBIT-P17-THE TRUE COPY OF THE DEMAND NOTICE IN FORM 1 BEARING NUMBER 2014/1654/2/300 DATED 27/06/2014 ISSUED BY THE 4TH RESPONDENT UNDER SECTION 7 OF THE KERALA REVENUE RECOVERY ACT, 1968.**

**EXHIBIT-P18-THE TRUE COPY OF THE DEMAND NOTICE IN FORM 10 BEARING NUMBER 2014/1654/2/300 DATED 27/06/2014 ISSUED BY THE 4TH RESPONDENT UNDER SECTION 34 OF THE KERALA REVENUE RECOVERY ACT, 1968.**

**RESPONDENT(S)' EXHIBITS:**

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**NIL**

**//TRUE COPY//**

**P.S.TO JUDGE**

**Msv/**

**A.K.JAYASANKARAN NAMBIAR, J.**

.....  
W.P.(C).No.34702 of 2014

.....  
Dated this the 6<sup>th</sup> day of January, 2015

**J U D G M E N T**

Against Exts.P1, P2 and P3 assessment orders, petitioner preferred Exts.P7, P8 and P9 appeals before the 1<sup>st</sup> respondent. Along with the appeal, the petitioner had also preferred Exts.P10, P11 and P12 stay petitions. The 1<sup>st</sup> respondent has now passed Ext.P14 order on the stay petitions, 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, P2 and P3 assessment orders.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 1<sup>st</sup> respondent had not exercised his discretion validly while passing the said order.

3. Heard Sri.Mohammed Rafiq, the learned counsel for the petitioner and Sri.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

4. 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.P14 order, the 1<sup>st</sup> 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.P14 order is quashed and the 1<sup>st</sup> 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 1<sup>st</sup> respondent as directed above and communicated to the petitioner.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

mns/

