IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 34553 of 2015 (T)

PETITIONER :

K.K.BALACHANDRAN, AGED 68 YEARS,
B & B CHEMICAL INDUSTRIES, ISHARA, ELAVUMTHITTA P.O.

BY ADV. SRI.AJI V.DEV

RESPONDENTS :
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1. **THE COMMERCIAL TAX OFFICER,**
   PATHANAMTHITTA - 689 645.

2. **THE DEPUTY COMMISSIONER (APPEALS)**
   COMMERCIAL TAXES, KOLLAM - 691 002.

3. **THE DEPUTY TAHSILDAR**
   (REVENUE RECOVERY), PATHANAMTHITTA - 689 645.

BY GOVERNMENT PLEADER SRI. R. RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 34553 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: **A TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2013-14 DATED 5.6.2015.**

EXT.P-1(A): **A TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2014-15 DATED 5.6.2015.**

EXT.P-2: **A TRUE COPY OF THE ANNUAL RETURN FILED FOR THE YEARS 2013-14 DATED 7.10.2015.**

EXT.P-2(A): **A TRUE COPY OF THE ANNUAL RETURN FILED FOR THE YEARS 2014-15 DATED 7.10.2015**

EXT.P-3: **A TRUE COPY OF THE APPEAL FILED ALONG WITH PETITION FOR STAY FOR THE YEAR 2013-14 DATED 14.7.2015.**

EXT.P-3(A): **A TRUE COPY OF THE APPEAL FILED ALONG WITH PETITION FOR STAY FOR THE YEAR 2014-15 DATED 14.7.2015.**

EXT.P-4: **A TRUE COPY OF THE INTERLOCUTORY ORDER STIPULATING CONDITIONAL STAY DATED 23.9.2015.**

EXT.P-5: **A TRUE COPY OF THE TIME EXTENSION ORDER PASSED BY THE 2ND DATED 14.10.2015.**

EXT.P-6: **A TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED TO THE PETITIONER FOR THE YEAR 2013-14 DATED 12.8.2015.**

EXT.P-6(A): **A TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED TO THE PETITIONER FOR THE YEAR 2014-15 DATED 12.8.2015.**

EXT.P-7: **A TRUE COPY OF A CERTIFICATE ISSUED BY THE VILLAGE OFFICER, MEZHUVELI DATED 5.10.2015**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.34553 OF 2015 (T)

Dated this the 17th 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. Against Exts.P1 and P1(a) assessment orders, the petitioner had preferred Exts.P3 and P3(a) appeals together with stay petitions before the 2nd respondent. The 2nd respondent has now passed Ext.P4 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 and P1(a) 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.P4 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.P4 order is quashed and the 2nd respondent is directed to reconsider the matter and pass fresh orders in the stay petition 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/17/11/15