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. 34615 of 2015 (B)

PETITIONER :

NIZAMUDIN
PROPRIETOR, PALLIMUKKIL FURNITURE, CHATHINAMKULAM
CHANDANATHOPE, KOLLAM DISTRICT, PIN - 691014.

BY ADVS.SRI.MOHAMMED RAFIQ
S. AJAYAGHOSH KUMAR

RESPONDENT(S) :
----

1. THE DEPUTY COMMISSIONER (APPEALS)-II
DEPARTMENT OF COMMERCIAL TAXES, KERALA
KOLLAM DISTRICT, PIN - 691002.

2. THE COMMERCIAL TAX OFFICER
2ND CIRCLE, KOLLAM DISTRICT, PIN - 691013.

3. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT
GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN - 695001.

R1 TO R3 BY GOVT. 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:

Mn

WP(C).No. 34615 of 2015 (B)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT-P1: **THE TRUE COPY OF THE ASSESSMENT ORDER NO.320207 57155/12-13 DATED 25.07.2015 RELATING TO THE ASSESSMENT YEAR 2012-13(CST) PASSED BY THE 2ND RESPONDENT.**

EXHIBIT-P2: **THE TRUE COPY OF THE APPEAL DATED 25.09.2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FROM THE ASSESSMENT ORDER (CST) FOR THE YEAR 2012-13.**

EXHIBIT-P3: **TRUE COPY OF THE APPLICATION FOR STAY DATED 25.09.2015 IN THE APPEAL RELATING TO THE YEAR 2012-13 (CST) FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**

EXHIBIT-P4: **THE TRUE COPY OF ORDER NO.KVATA(KLM) 687/15 DATED 09.10.2015 PASSED BY THE 1ST RESPONDENT DISPOSING OF THE APPLICATION FOR STAY IN APPEAL RELATING TO THE YEAR 2012-13 (CST).**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.34615 of 2015

....

Dated this the 17th day of November, 2015

J U D G M E N T

Against Ext.P1 assessment order, the petitioner preferred Ext.P2 appeal before the 1st respondent. Along with the appeal, the petitioner had also preferred Ext.P3 stay petition. The 1st respondent has now passed Ext.P4 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 1st 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.P4 order, the 1st

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 1st 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 1st respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/17.11.15