

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 35039 of 2015 (D)

PETITIONER(S):

**T. AJIKUMAR,
M/S.A.G. COMPUTERS, PPXX/444,
NH 47 MAIN ROAD, PONNAMKULAM, PARASUVAIKAL,
PARASSALA, RESIDING AT DEVI NILAYAM, PARASUVAIKKAL,
PPARASUVAIKKAL P.O., NEYYATTINKARA TALUK, PIN-695 508.**

**BY ADVS.SRI.VADAKARA V.V.NMENON,
SRI.C.N.GOPAKUMAR.**

RESPONDENT(S):

- 1. THE INTELLIGENCE INSPECTOR,
SQUAD VII, NEYYATTINKARA, NEYYATTINKARA P.O.,
THIRUVANANTHAPURAM-695 121.**
- 2. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES,
OFFICE OF THE DEPUTY COMMISSIONER,
THIRUVANANTHAPURAM-695 022.**
- 3. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
AGRICULTURAL INCOME TAX & SALES TAX,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.**

BY GOVT. PLEADER SRI.R. RANJITH.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1. TRUE PHOTOCOPY OF THE LETTER NO.G3-22907/2014 DATED 16/01/2015 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER OF VIGILANCE & ANTI CORRUPTION.
- EXT.P1(A). TRUE COPY OF THE REPORT DATED 25/06/2014 SUBMITTED BY THE DY.S.P. , VACB, THIRUVANANTHAPURAM UNIT.
- EXT.P1(B). TRUE COPY OF THE LETTER DATED 03/06/2015 RECEIVED BY THE PETITION FROM THE SI OF POLICE, POZHIYOOR POLICE STATION.
- EXT.P2. TRUE PHOTOCOPY OF THE NOTICE NO.SIR.225077/25-7/25-7-13 PREPARED AND GIVEN BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXT.P2(A). TRUE COPY OF THE SHOP INSPECTION REPORT DATED 25/07/2013 GIVEN TO THE PETITIONER BY THE 1ST RESPONDENT.
- EXT.P2(B). TRUE COPY OF THE RECEIPT DATED 25/07/2013 GIVEN TO THE PETITIONER TO THE 1ST RESPONDENT.
- EXT.P3. A TRUE PHOTOCOPY OF NOTICE OF DEMAND FOR THE YEAR 2010-2011 DATED 28/03/2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P3(A). TRUE PHOTOCOPY OF NOTICE OF DEMAND FOR THE YEAR 2011-2012 DATED 28/03/2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P3(B). TRUE PHOTOCOPY OF NOTICE OF DEMAND FOR THE YEAR 2012-2013 DATED 28/03/2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P3(C). TRUE PHOTOCOPY OF NOTICE OF DEMAND FOR THE YEAR 2013-2014 DATED 28/03/2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P4. TRUE COPY OF THE REVISION PETITION DATED 25/05/2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT WITH PENALTY ORDER, DEMAND NOTICE, STAY PETITION AND ALL OTHER DOCUMENTS.
- EXT.P5. TRUE COPY OF THE COMMON ORDER DATED 20/10/2015 PASSED BY THE 2ND RESPONDENT IN FOUR STAY PETITIONS FILED ALONG WITH RP NOS.35, 36,37, AND 38/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No. 35039 of 2015

Dated this the 19th day of November 2015

JUDGMENT

Against Ext.P2 penalty order, petitioner preferred Ext.P4 revision before the 2nd respondent. Along with the revision, the petitioner had also preferred 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.P2 penalty 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.

(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

sm/