IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 35304 of 2015 (K)

PETITIONER(S):

S.SIJU, PARTNER,
M/S.VELLACKAMATTATHIL INDUSTRIES,
KARUKADOM P.O., KOTHAMANGALAM.

BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANY

RESPONDENT(S):

1. ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
SPECIAL CIRCLE, PERUMBAVOOR-682368.

2. THE DEPUTY COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES,
COMMERCIAL TAX COMPLEX, ERNAKULAM-682030.

3. INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
MUVATTUPUZHA-682101.

BY GOVERNMENT PLEADER SMT.K.T.LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 35304 of 2015 (K)

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1- **COPY OF THE ORIGINAL ASSESSMENT ORDER NO.321531412194/2010-11 DATED 29-10-12 ISSUED BY THE R1 TO THE PETITIONER**

EXHIBIT P2- **COPY OF THE INVOICES RAISED IN FAVOUR OF KSEB BY THE PETITIONER**

EXHIBIT P3- **COPY OF THE STAY ORDER NO.KVATA 3576/12 DATED 31/1/13 ISSUED BY THE R2 TO THE PETITIONER**

EXHIBIT P4- **COPY OF THE CHEQUE NO.686009202 DATED 14/2/13 SUBMITTED BY THE PETITIONER BEFORE THE R1**

EXHIBIT P5- **COPY OF THE SECURITY BOND IN FORM 6A DATED 11/2/11 FILED BY THE PETITIONER BEFORE THE R1**

EXHIBIT P6- **COPY OF THE APPELLATE ORDER NO.KVAT 3576/12 DATED 28-1-14 ISSUED BY THE R2 TO THE PETITIONER.**

EXHIBIT P7- **COPY OF THE PRE ASSESSMENT NOTICE NO.32153141294/2010-11/ REMANDED DATED 26/11/14 ISSUED BY THE R1 TO THE PETITIONER**

EXHIBIT P8- **COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE R1 DATED 2/12/14**

EXHIBIT P9- **COPY OF THE REMANDED ASSESSMENT ORDER NO.32153141294/2010-11 DATED 20-12-14 ISSUED BY THE R1 TO THE PETITIONER**

EXHIBIT P10- **COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE THE R2 DATED 20-3-15**

EXHIBIT P11: **COPY OF THE PETITION FOR OUT OF TURN HEARING FILED BY THE PETITIONER BEFORE THE R2 DATED 20-3-15**

EXHIBIT P12: **COPY OF THE PETITION FOR STAY OF CCOLLECTION OF THE DISPUTED AMOUNT FILED BY THE PETITIONER BEFORE THE R2 DATED 20/3/15**

EXHIBIT P13: **COPY OF THE REVENUE RECOVERY NOTICE DATED 5/10/15 ISSUED BY THE R3 TO THE PETITIONER**

EXHIBIT P14: **COPY OF THE HEARING NOTE FILED BY THE PETITIONER BEFORE THE R2**

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EXHIBIT P15: **COPY OF THE STAY ORDER NO.KVAT-735/15 DATED 31/10/15 ISSUED BY THE R2 TO THE PETITIONER**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.35304 OF 2015 (K)

Dated this the 23rd day of November, 2015

<u>J U D G M E N T</u>

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the 1st respondent. Against Ext.P9 assessment order, petitioner had preferred Ext.P10 appeal and Ext.P12 stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P15 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.P9 assessment 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 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.P15 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.P15 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/23/11/15