

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. 35460 of 2015 (F)

PETITIONER:

**BCG GOLDEN ORCHID, 1ST FLOOR,
HOTEL HARBOUR VIEW, ERNAKULAM,
COCHIN - 682 015, REPRESENTED BY ITS
MANAGING PARTNER SMT.RENU C BABU, PARTNER.**

BY ADV. SRI.K.S.HARIHARAN NAIR

RESPONDENT(S):

- 1. ASSISTANT COMMISSIONER
(WORKS CONTRACT),
DEPARTMENT OF COMMERCIAL TAXES,
OLD RAILWAY STATION ROAD,
ERNAKULAM, PIN - 682 018.**
- 2. THE DEPUTY COMMISSIONER(APPEALS),
DEPARTMENT OF COMMERCIAL TAXES,
TAX COMPLEX, THEVARA, ERNAKULAM, PIN - 682 015.**
- 3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, KAKKANAD, PIN - 682 030.**

BY GOVERNMENT PLEADER SMT.LILLYK.T

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

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : COPY OF THE ASSESSMENT ORDER DATED 31.7.2015
- EXT. P2 : COPY OF THE APPEAL MEMORANDUM DATED 11.9.2015.
- EXT. P3 : COPY OF STAY PETITION 11.9.2015.
- EXT. P4 : COPY OF THE STAY ORDER ISSUED BY THE 2ND RESPONDENT
DATED 30.9.2015.
- EXT. P5 : COPY OF APPLICATION FOR MODIFYING THE STAY CONDITION
DATED 20.10.2015.
- EXT. P6: COPY OF THE RR NOTICE ISSUED BY THE 3RD RESPONDENT
DATED 17.11.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 35460 of 2015

Dated this the 23st day of November, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Ext.P1 assessment order for the assessment year 2011-2012, the petitioner had preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P3 stay petition. The 2nd respondent has now passed Ext.P4 order 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 the assessment order.

2. In the writ petition, the petitioner impugns the said conditional orders 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.

4. 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 petitions filed by the petitioner, within one month 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.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE