IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 35592 of 2015 (Y)

PETITIONER :

FINCH HOTELS & TRADERS (PVT) LTD.,
ERATTUPETTA P.O., PIN – 686 122
REPRESENTED BY MANAGING DIRECTOR
P.N. SATHEESAN.

BY ADV. SRI. V.V. GEORGEKUTTY

RESPONDENT(S) :

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1. COMMERCIAL TAX OFFICER
PALA – 686 575.

2. ASSISTANT COMMISSIONER
COMMERCIAL TAXES, SPECIAL CIRCLE
KOTTAYAM – 686 001.

3. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, KOTTAYAM – 686 001.

4. INSPECTING ASSISTANT COMMISSIONER
COMMERCIAL TAXES, PALA – 686 575.

R1 TO R4 BY GOVT. PLEADER SMT. K.T. LILLY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 35592 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	:	COPY OF THE COMPOUNDING ORDER FOR 2013-14 DATED 23-1-2014 ISSUED U/S. 7(ii) (a) BY THE IST RESPONDENT.
EXT.P1(a)		COPY OF THE PERMISSION FOR COMPOUNDING FOR 2013-14 DATED 23-1-2014 ISSUED U/S. 7(ii) (a) BY THE IST RESPONDENT.
EXT.P2		COPY OF THE COMPOUNDING ORDER AND DEMAND NOTICE FOR 2013-14 DATED 31-8-2015 ISSUED BY THE 2ND RESPONDENT.
EXT.P3		COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
EXT.P3(a)		COPY OF STAY PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
EXT.P4		COPY OF THE STAY ORDER DATED 9-11-2015 ISSUED BY THE 3RD RESPONDENT.
EXT.P5		COPY OF THE REVENUE RECOVERY NOTICE DATED 2.11.2015 ISSUED BY THE 4TH RESPONDENT.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 35592 of 2015

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Dated this the 25th day of November, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Ext.P2 compounding order for the assessment year 2013-2014, the petitioner had preferred Ext.P3 appeal before the 3rd respondent. Along with the appeal, the petitioner had also preferred Ext.P3(a) stay petition. The 3rd 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

das /25.11.15