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. 35609 of 2015 (A)

PETITIONER :

M/S. MIDPACK TRADELINKS,
KELTRON ROAD, AROOR, ALAPPUZHA DISTRICT,
REPRESENTED BY ITS PARTNER K.P.ABDUL KARIM.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT(S):
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1. THE ASST. COMMISSIONER (ASSESSMENT),
   COMMERCIAL TAXES SPECIAL CIRCLE,
   ALAPPUZHA-688 001

2. THE INTELLIGENCE OFFICER (IB),
   DEPARTMENT OF COMMERCIAL TAXES,
   ALAPPUZHA-688 001

3. THE DEPUTY COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   ALAPPUZHA-688 001

BY GOVERNMENT PLEADER SRI.R.RANJITH

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

sts

WP(C).NO.35609/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE INVOICE ISSUED BY M/S. GLISTERS SACHET INDIA PVT. LTD., MALAPPURAM DATED 19/03/2014

P2 COPY OF THE INVOICE ISSUED BY THE PETITIONER DATED 29/02/2014

P3 COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 25/09/2015

P4 COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 07/10/2015

P5 COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 07/10/2015

P6 COPY OF THE HEARING NOTE FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED NIL

P7 COPY OF THE HEARING NOTE FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 11/11/2015.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 35609 of 2015
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Dated this the 25th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 conditional order of stay passed by the 3rd respondent in a revision petition filed against an order imposing penalty on the petitioner for the assessment year 2013-14 under the Kerala Value Added Tax Act, hereinafter referred to as the KVAT Act. The grievance of the petitioner in the writ petition is essentially that, while passing Ext.P7 order, the 3rd respondent did not exercise its discretion validly.

2. 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 as also the submissions made across the bar, I find that in Ext.P7 the 3rd respondent does not furnish any reason as to why the petitioner was required to pay 30% of the disputed amount as a condition for 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. Inasmuch as the issue involved is one relating to classification of the goods and there is a prima facie case in favour of the petitioner, I direct the 3rd respondent to consider and pass orders on Ext.P4 revision petition, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. To enable the 3rd respondent to do so, I quash Ext.P7 order and make it clear that, coercive steps for recovery of amounts confirmed against the petitioner by Ext.P3 order, shall be kept in abeyance till such time as orders are passed by the 3rd respondent as directed and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /25.11.15