IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 35881 of 2015 (I)

PETITIONER(S):

ABITHA BEEVI, PROPRIETOR,
A.B. TRADERS, AMARAVILA,
NEYYATTINKARA, TRIVANDRUM DISTRICT, PIN-695 122.

BY ADVS.SRI.MOHAMMED RAFIQ,
SRI.G.AJAYAGHOSH.

RESPONDENT(S):
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1. THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, TRIVANDRUM, PIN-695 002.

2. THE COMMERCIAL TAX OFFICER,
   NEYYATTINKARA, TRIVANDRUM DISTRICT, PIN-695 121.

3. THE STATE OF KERALA,
   REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
   GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN-695 001.

BY GOVT. PLEADER SRI.RANJITH. R.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 35881 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS:-

P1- THE TRUE COPY OF THE ASSESSMENT ORDER NO.32010959902 DATED 06.10.2015 RELATING TO THE YEAR 2008-09 PASSED BY THE 2ND RESPONDENT UNDER SECTION 25A OF THE KVAT ACT, 2003.

P2- THE TRUE COPY OF THE APPEAL DATED 25.09.2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P3- THE TRUE COPY OF THE STAY APPLICATION DATED 09.10.2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P4- THE TRUE COPY OF THE ORDER NO.KVATA 397/15 DATED 07.11.2015 PASSED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.35881 of 2015

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Dated this the 27th day of November 2015

JUDGMENT

Against Ext.P1 Assessment order, petitioner preferred Ext.P2 appeal before the 1st respondent. Along with the appeal, the petitioner had also preferred Ext.P3 stay petition. The 1st respondent has now passed Ext.P4 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.P1 assessment order.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 1st 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.P4 order, the 1st 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 1st 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 1st respondent as directed above and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/