IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 36574 of 2015 (V)

PETITIONER(S):

BALU GEORGE, VALLUVASSERIL HARDWARES,
28/555, KADAVANTHRA, ERNAKULAM, KOCHI-682020.

BY ADVS.SRI.R.MURALIDHARAN (AROOR)
SRI.IVANS C. CHAMAKKAL

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   KVAT SECOND CIRCLE, DEPARTMENT OF COMMERCIAL TAXES,
   TRIPUNITHURA-682301.

2. **THE DEPUTY COMMISSIONER (APPEALS),**
   DEPARTMENT OF COMMERCIAL TAXES,
   ERNAKULAM-682015.

3. **THE INSPECTING ASSISTANT COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES,
   CIVIL STATION, KAKKANAD, ERNAKULAM-682230.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 36574 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- **TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE R1 UNDER KVAT ACT, FOR 2012-13 DT.19/1/15 TOGETHER WITH THE STATUTORY DEMAND NOTICE**

P2- **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE R2 AGAINST EXT.P1 ORDER, DATED 11/3/15**

P3- **TRUE COPY OF THE IA FOR STAY FILED BY THE PETITIONER BEFORE THE R2 DT.11/3/15**

P4- **TRUE COPY OF THE JUDGMENT IN WPC.10067/15 DATED 27/3/15**

P5: **TRUE COPY OF THE ORDER PASSED BY THE ASSISTANT COMMISSIONER (APPEALS), DATED 29/7/15**

P6: **TRUE COPY OF THE AUDIT REPORT IN FORM NO.13 & 13A SUBMITTED Y THE PETITIONER ON 11/3/15**

P7: **TRUE COPY OF THE NOTICE POSTING THE APPEAL FOR HEARING TO 4/11/15 DATED 26/10/15.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 36574 of 2015

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Dated this the 3rd day of December, 2015

JUDGMENT

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003. Against Ext.P1 assessment order for the assessment year 2012-2013, the petitioner had preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P2 stay petition. The 2nd respondent has now passed Ext.P5 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.P5 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.P5 order is, accordingly, quashed. Considering the fact that the petitioner has also received a notice in connection with the hearing of appeal itself, there will be direction to the 2nd respondent to consider and pass orders on Ext.P2 appeal, after hearing the petitioner, within one month from the date of receipt of a copy of this judgment.

iii) I make it clear that, till such time as fresh orders are passed by the 2nd respondent, as directed above, and communicated to the petitioner, further proceedings for recovery of amounts confirmed against the petitioner by Ext.P1 assessment order, shall be kept in abeyance.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /3.12.15