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. 36663 of 2015 (G)

PETITIONER:

SAJI MATHEW, SON OF MATHEW,
PROPRIETOR, M/S.EAST WEST SALES CORPORATION,
KODIMATHA, KOTTAYAM.

BY ADVS.SRI.JOHN JOSEPH VETTIKAD
SRI.C.JOSEPH JOHNY

RESPONDENTS:

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1. COMMERCIAL TAX OFFICER,
   FIRST CIRCLE, KOTTAYAM 686 001.

2. THE DEPUTY COMMISSIONER (APPEALS II),
   COMMERCIAL TAXES, KOTTAYAM 686 001.

BY GOVERNMENT PLEADER SRI. R. RENJITH

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

WP(C).No. 36663 of 2015 (G)

APPENDIX

<u>PETITIONER(S)' EXHIBITS</u>

EXHIBIT P1	-	THE TRUE COPY OF THE NOTICE DATED 16.10.2011 ISSUED BY THE COMMERCIAL TAX INSPECTOR, WALAYAR
EXHIBIT P2	-	TRUE COPY OF THE PROCEEDINGS OF THE INTELLIGENCE OFFICER, SQUAD NO.III, COMMERCIAL TAXES, KOTTAYAM DATED 9.3.2012
EXHIBIT P3	-	TRUE COPY OF THE CLARIFICATION ORDER DATED 16.1.2012
EXHIBIT P4	-	TRUE COPY OF THE APPELLATE ORDER DATED 26.8.2015 OF THE DEPUTY COMMISSIONER (APPEALS II) , COMMERCIAL TAXES, KOTTAYAM.
EXHIBIT P5	-	THE TRUE COPY OF THE PROCEEDINGS OF THE 1ST PETITONER UNDER SECTION 25(1) ALONG WITH DEMAND NOTICE DATED 25.8.2015
EXHIBIT P6	-	THE TRUE COPY OF THE APPEAL MEMORANDUM
EXHIBIT P7	-	TRUE COPY OF THE APPLICATION FILED FOR ADVANCING THE CASE DATED 7.10.2015
EXHIBIT P8	-	THE TRUE COPY OF THE ORDER DATED 3.11.2015 OF THE DEPUTY COMMISSIONER (APPEALS II); COMMERCIAL TAXES, KOTTAYAM.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE.

ncd

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.36663 OF 2015 (G)

Dated this the 3rd day of December, 2015

J U D G M E N T

The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 on the files of the 1st respondent. Against Ext.P5 assessment order, petitioner had preferred Ext.P6 appeal together with a stay petition before the 2nd respondent. The 2nd respondent has now passed Ext.P8 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.P5 assessment order.

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

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.P8 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.P8 order is quashed and the 2nd respondent is directed to reconsider the matter and pass fresh orders in the stay petition filed by the petitioner, within two months 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/3/12/15