IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C).No. 37874 of 2015 (H)
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PETITIONER(S) :

M/S.USHA INTERNATIONAL LTD.,
IX/418/A1, LOGISTIC PARK, THENGODE P.O.,
EDACHIRA, KAKKNAD, ERNAKULAM,
REPRESENTED BY DEPARTMENT MANAGER G.SANKAR.

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.O.A.NURIYA
KUM.SOUMYA PRAKASH
KUM.MEKHALA M.BENNY

RESPONDENT(S) :
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1. **THE ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, SPECIAL CIRCLE-III,
   ERNAKULAM-682 030.

2. **THE DEPUTY COMMISSIONER(APPEALS-II),**
   COMMERCIAL TAXES, ERNAKULAM- 682 030.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 37874 of 2015 (H)
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APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: **TRUE COPY OF THE ASSESSMENT ORDER UNDER THE VAT ACT FOR THE ASSESSMENT YEAR 2009-10.**

EXT.P2: **TRUE COPY OF THE ASSESSMENT ORDER UNDER THE CST ACT FOR THE A.Y. 2009-10.**

EXT.P3: **TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT UNDER THE VAT ACT FOR THE A.Y. 2009-10.**

EXT.P4: **TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT UNDER THE CST ACT FOR THE A.Y.2009-10.**

EXT.P5: **TRUE COPY OF STAY PETITION FILED BEFORE THE 2ND RESPONDENT UNDER THE VAT ACT FOR THE A.Y. 2009-10.**

EXT.P6: **TRUE COPY OF THE STAY PETITION FILED BEFORE THE 2ND RESPONDENT UNDER THE CST ACT FOR THE A.Y. 2009-10.**

EXT.P7: **TRUE COPY OF THE ANNUAL RETURN IN FORM 10 FOR THE A.Y. 2009-10.**

EXT.P8: **TRUE COPY OF THE AUDITED REPORT IN FORM 13 AND 13A FOR THE A.Y. 2009-10.**

EXT.P9: **TRUE COPY OF THE SUMMARY OF DISCOUNT ON BILLS FOR THE A.Y. 2009-10.**

EXT.P9(A): **TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF APRIL.**

EXT.P9(B): **TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF MAY.**

EXT.P9(C): **TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF JUNE.**

EXT.P9(D): **TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF JULY.**

EXT.P9(E): **TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF AUGUST.**

EXT.P9(F): **TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF SEPTEMBER.**

EXT.P9(G): **TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF OCTOBER.**

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EXT.P9(H):	**TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF NOVEMBER.**
EXT.P9(I):	**TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF DECEMBER.**
EXT.P9(J):	**TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF JANUARY.**
EXT.P9(K):	**TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF FEBRUARY.**
EXT.P9(L):	**TRUE COPY OF THE SALES REGISTER FOR THE MONTH OF MARCH.**
EXT.P10:	**TRUE COPY OF THE COMMON ORDER DATED 18/11/2015 ISSUED BY THE**

RESPONDENT(S)' EXHIBITS :
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NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 37874 of 2015

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Dated this the 15th day of December, 2015

JUDGMENT

The petitioner is an assessee under the CST Act. Against Exts.P1 and P2 assessment orders for the assessment year 2009-2010, the petitioner had preferred Exts.P3 and P4 appeals before the 2nd respondent. Along with the appeal, the petitioner had also preferred Exts.P5 and P6 stay petitions. The 2nd respondent has now passed Ext.P10 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.P10 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. There is also no reference to the documents produced by the petitioner at the time of hearing. 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.P10 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 /15.12.15