IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 38282 of 2015 (I)

PETITIONER:

M/S. SEVEN SEAS DISTILLERY PVT. LTD.,
MANNUTHY, THRISSUR, REPRESENTED BY
K.D.ANTO, GENERAL MANAGER.

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

RESPONDENT(S):

1.THE ASST. COMMISSIONER-IV,
COMMERCIAL TAXES SPECIAL CIRCLE,
THRISSUR - 680 001.

2. DEPUTY COMMISSIONER (APPEALS),
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM - 682 013.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 38282 of 2015 (I)

APPENDIX

PETITIONERS'S EXHIBITS:

EXT. P1 : COPY OF ORDER IN T.A.NOS.403 TO 407/09 ISSUED BY THE AGRL.INCOME TAX & SALES TAX APPELLATE TRIBUNAL, PALAKKD DATED 28.12.2009.

EXT. P1(A) : COPY OF ORDER IN T.A.NOS.147, 148, 149, 151,152 & 153/2010 ISSUED BY THE AGRL.INCOME TAX & SALES TAX APPELLATE TRIBUNAL, ERNAKULAM DATED 31.12.2010.

EXT. P1(B) : COPY OF ORDER IN T.A.NOS.38 TO 44/13 ISSUED BY THE AGRL.INCOME TAX & SALES TAX APPELLATE TRIBUNAL, PALAKKD DATED 14.1.2015.

EXT. P1(C) : COPY OF ORDER IN KVATA NO.236/2011 ISSUED BY THE DEPUTY COMMISSIONER (APPEALS), KOTTAYAM DATED 1.9.2011.

EXT. P2 : COPY OF ASSESSMENT FOR THE YEAR 2011-12 ISSUED BY THE 1ST RESPONDENT DATED 12.10.2015

EXT. P3 : COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 18.11.2015.

EXT. P4 : COPY OF ORDER PASSED BY THE 2ND RESPONDENT DATED 25.11.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C).No.38282 of 2015

..

Dated this the 17th day of December, 2015

J U D G M E N T

Against Ext.P2 assessment order, the petitioner preferred Ext.P3 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred a stay petition. The 2nd 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.P2 asessment 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. While passing fresh orders, the 2nd respondent shall also take note of Ext.P1 series of orders passed in relation to the petitioner for the earlier assessment years.

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 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.Ext.P4 order is quashed and the 2nd 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 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/17.12.15