IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 38569 of 2015 (U)
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PETITIONER(S) :

M/S.ESSAR PROJECTS INDIA LTD.,
KRA-46 A, AKG ROAD, OPP. THIRUVANKULAM HS SCHOOL,
KADUNGAMANGALAM, ERNAKULAM- 682 305,
REPRESENTED BY ITS HEAD FINANCE AND ACCOUNTS
MR.GULAB PAREEK.

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 (WC & LT),**
   DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM- 682 030.

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

BY GOVERNMENT PLEADER SRI.R.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 38569 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: **TRUE COPY OF THE ORDER DATED 30.06.2015 ISSUED BY THE 1ST RESPONDENT FOR THE A.Y.2011-2012.**

EXHIBIT P2: **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE A.Y.2011-2012.**

EXHIBIT P3: **TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE A.Y.2011-2012.**

EXHIBIT P4: **TRUE COPY OF THE ORDER DATED 05.10.2015 ISSUED BY THE 2ND RESPONDENT FOR THE A.Y 2008-2009.**

EXHIBIT P5: **TRUE COPY OF THE ORDER DATED 04.04.2015 ISSUED BY THE 2ND RESPONDENT FOR THE A.Y.2008-2009.**

EXHIBIT P6: **TRUE COPY OF THE ORDER DATED 04.04.2015 ISSUED BY THE 2ND RESPONDENT FOR THE A.Y. 2009-2010.**

EXHIBIT P7: **TRUE COPY OF THE ORDER DATED 04.04.2015 ISSUED BY THE 2ND RESPONDENT FOR THE A.Y 2010-2011.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.38569 of 2015

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Dated this the 18th day of December, 2015

J U D G M E N T

Against Ext.P1 assessment order, petitioner preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P3 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.P1 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 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.P5 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/19.12.15