

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

WP(C).No. 39346 of 2015 (P)

PETITIONER :

**M/S.ADITYA RESORTS,
KARALI MUKKU, KARALI.P.O.,
SASTHAMKOTTA, WEST KALLADA,
KOLLAM-690 521, REPRESENTED BY K.S.ASHOK KUMAR,
MANAGING PARTNER.**

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

RESPONDENT(S):

- 1. THE INTELLIGENCE OFFICER,
SQUAD NO.1, DEPARTMENT OF COMMERCIAL TAXES,
KOLLAM-691 001.**
- 2. THE DEPUTY COMMISSIONER (APPEALS)-II,
DEPARTMENT OF COMMERCIAL TAXES, KOLLAM-691 001.**

BY GOVERNMENT PLEADER SMT. LILLY.K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.39346/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE PENALTY ORDER ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2013-14, DATED 28/11/2014.**
- P2 COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 13/01/2015.**
- P2(A) COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 13/01/2015**
- P3 COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 02/12/2015.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.39346 of 2015

Dated this the 23rd day of December 2015

JUDGMENT

Against Ext.P1 penalty order, petitioner preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P2(a) stay petition. The 2nd respondent has now passed Ext.P3 order on the stay petition directing the petitioner to pay 35% of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Ext.P1 penalty 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.P3 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.P3 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.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/