

GST/CST & VAT: Kerala VAT - Where assessee against assessment order filed appeal before Appellate Authority along with application for stay of recovery of assessed tax and Appellate Authority granted stay subject to deposit of 20 per cent of tax and interest by assessee, Appellate Authority considering stay application was bound to give reasons even while granting conditional stay

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[2018] 94 taxmann.com 175 (Kerala)

HIGH COURT OF KERALA

Kairali Steels & Alloys (P.) Ltd.

v.

Assistant Commissioner of State Tax*

A.K. JAYASANKARAN NAMBIAR, J.

W.P. (C) NO. 15981 OF 2018

MAY 15, 2018

Section [75](#) of the Central Goods and Services Tax Act, 2017/ Section [31](#) of the Kerala Value Added Tax Act, 2003 - Demand and recovery - General - Whether an authority considering a stay petition is bound to give reasons even while granting conditional stay - Held, yes - Against assessment order, assessee filed appeal before Appellate Authority along with application for stay of recovery of assessed tax - Appellate Authority passed order on stay application directing assessee to pay 20 per cent of tax and interest as a condition for grant of stay - Whether since Appellate Authority did not state reasons as to why assessee was required to deposit amount as a condition for grant of stay, impugned order required to be quashed - Held, yes - Whether Competent Authority was to be directed to pass fresh order on stay application preferred by assessee - Held, yes [Para 3] [In favour of assessee]

FACTS

- Against the order of assessment, the assessee filed an appeal before the Appellate Authority along with an application for stay of recovery of assessed tax.
- The Appellate Authority passed order on the stay application directing the assessee to pay 20 per cent of the tax and interest as a condition for the grant of stay.
- On writ:

HELD

- In the impugned order the Appellate Authority does not state reasons as to why the assessee was required to deposit the amount as a condition for the grant of stay. The Kerala High Court in the case of *Archana Agencies v. CTO* [\[2014\] 47 taxmann.com 218/46 GST 756](#) has held that an authority considering a stay petition is bound to give reasons even while granting conditional stay.
- Accordingly, the impugned order required to be quashed and the Appellate Authority was to be directed to pass fresh order on the stay application preferred by the assessee.

- Recovery steps, if any, initiated against the assessee shall be kept in abeyance till such time as fresh order is passed by the Appellate Authority. [Para 3]

CASE REVIEW

Archana Agencies v. CTO [\[2014\] 47 taxmann.com 218/46 GST 756 \(Ker.\)](#) (para 3) *followed*.

CASES REFERRED TO

Archana Agencies v. CTO [\[2014\] 47 taxmann.com 218/46 GST 756 \(Ker.\)](#) (para 3)

K. Srikumar, Sr. Adv., **P.R. Ajithkumar**, **K. Manoj Chandran** and **S.A. Mansoor (Pattanam)** *for the Petitioner*. **Smt. Thushara James**, Govt. Pleader *for the Respondent*.

JUDGMENT

1. 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 20% of the tax and interest 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 CTO* [\[2014\] 47 taxmann.com 218/46 GST 756 \(Ker.\)](#) that an authority considering a stay petition is bound to give reasons even while granting conditional stay.
- (ii) Accordingly, I quash Ext.P4 order and direct the 2nd respondent to pass fresh orders on the stay application preferred by the petitioner, after hearing the petitioner. To enable the 2nd respondent to do so, I direct the petitioner to appear before the 2nd respondent at this office at 11 am on 30.05.2018, the 2nd respondent shall pass fresh orders as directed within a month thereafter.
- (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.

s.k. jain

*In favour of assessee.