

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 1848 of 2015 (E)

PETITIONER:

**KRISHNA & COMPANY,
13/426 BYE-PASS ROAD, KUMBALAM,
REPRESENTED BY ITS MANAGING DIRECTOR
KRISHNAKUMAR K.BHAMMER.**

**BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA**

RESPONDENT(S):

- 1. INTELLIGENCE OFFICER, SQUAD NO.II,
COMMERCIAL TAXES DEPARTMENT,
MATTANCHERRY AT KARUKUTTY,
MATTANCHERRY-682002.**
- 2. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERRY-682002.**
- 3. INSPECTING ASSISTANT COMMISSIONER(RECOVERY),
COMMERCIAL TAXES, MATTANCHERRY, KOCHI-682002.**

BY GOVERNMENT PLEADER SMT.LILLY.K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 : TRUE COPY OF THE PROCEEDINGS OF THE ASSISTANT COMMISSIONER,SPECIAL CIRCLE,MATTANCHERY DATED 16.9.2014.
- EXT.P1(A) : TRUE COPY OF THE PROCEEDINGS OF THE ASSISTANT COMMISSIONER,VAT SPECIAL CIRCLE,MATTANCHERRY DATED 16.9.2014.
- EXT.P2 : TRUE COPY OF THE COUNTER FOIL CHALAN DATED 25.9.2014.
- EXT.2(A) : TRUE COPY OF THE COUNTER FOIL CHALAN DATED 26.9.2014.
- EXT.P3 : TRUE COPY OF THE PENALTY ORDER PASSED BY THE 1ST RESPONDENT DATED 7.11.2014.
- EXT.P4 : TRUE COPY OF THE REVISION FILED BY THE PETITIONER DATED 15.12.2014.
- EXT.P5 : TRUE COPY OF THE CONDITIONAL ORDER OF STAY PASSED BY THE 2ND RESPONDENT DATED 7.1.2015.
- EXT.P6 : TRUE COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 3RD RESPONDENT DATED 5.1.2015.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1848 OF 2015 (E)

Dated this the 20th day of January, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 conditional order of stay passed by the 2nd respondent, in a revision petition filed by the petitioner, against an order imposing penalty on the petitioner for the assessment year 2014-15. In the writ petition, Ext.P5 order, as well as Ext.P6 revenue recovery notice that was issued pursuant thereto, are impugned inter alia on the ground that while passing Ext.P5 order, the 2nd respondent had not exercised his discretion validly.

2. I have heard Sri.K.I.Mayankutty Mather, the learned counsel appearing for the petitioner as also Smt.Lilly.K.T., the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I note that in Ext.P5 order, the 2nd respondent has adverted to the submissions made by

the petitioner in the stay petition, and come to a finding that, while the petitioner has made out a prima facie case for the grant of a conditional stay, the merits of the matter would require a detailed examination which could only be done at the stage of final hearing. It was thereafter, and after taking into account the contentions of the petitioner, that the 2nd respondent demanded 10% of the amount confirmed against the petitioner by the penalty order, as a condition for the grant of stay against recovery of the balance amounts. On a consideration of the reasons given by the 2nd respondent in Ext.P5 order, I am not persuaded to interfere with the said order in the present proceedings under Article 226 of the Constitution of India.

Counsel for the petitioner would submit that in Ext.P6 revenue recovery notice, that was issued consequent to the penalty order passed against the petitioner, an amount of Rs.4,21,875/- is sought to be recovered towards collection charges. It is his apprehension that the respondents may demand 10% of the said charges as well pursuant to the directions in Ext.P5 order of the 2nd respondent. While dismissing the writ petition, I make it clear that the demand of 10% in Ext.P5 order shall be confined to the amounts confirmed

against the petitioner by Ext.P3 penalty order, and shall not include the amount shown as collection charges in Ext.P6 revenue recovery notice. Further, taking into account the request of counsel for the petitioner, the time granted for compliance with the directions in Ext.P5 order is extended till 15.2.2015. Save for the aforesaid directions with regard to payment of the amounts directed in Ext.P5 order, the writ petition in its challenge against Ext.P5 order, is dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp