IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C).No. 6421 of 2012 (C)

PETITIONER:

MARGARET FRANCO,
MARIYALAYAM HOUSE, SAKTHIKULANGARA P.O.,
KOLLAM-691 581.

BY ADVS.DR.K.P.SATHEESAN
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY, REVENUE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. THE COMMISSIONER OF LAND REVENUE,
OFFICE OF THE COMMISSIONER OF LAND REVENUE,
PUBLIC OFFICE, THIRUVANANTHAPURAM-695 033.

3. THE DISTRICT COLLECTOR,
KOLLAM, CIVIL STATION, KOLLAM-691 013.

4. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE
THIRUVANANTHAPURAM-695 033.

ADDL.R5 IMPLEADED:

Addl.R5. THE SECRETARY TO GOVERNMENT,
TAXES (A) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

(ADDL.R5 IS IMPLEADED AS PER ORDER DATED 29.09.2015 IN IA 13656/15.)
R1 BY ADV. SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE LETTER GIVEN BY THE ASSISTANT EXCISE COMMISSIONER, KOLLAM DATED 15.6.1998.

EXT.P2: TRUE COPY OF THE RECEIPT SHOWING THE REMITTANCE OF RS.16,46,060/- DATED 23.6.1998 ISSUED BY THE DISTRICT TREASURY, KOLLAM.

EXT.P3: TRUE COPY OF THE ORDER NO.LR(B4)34962/08 DATED 29.7.2011 ISSUED BY THE 2ND RESPONDENT.

EXT.P4: TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 12.8.2011.

EXT.P5: TRUE COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT DATED 30.9.2011.

EXT.P6: TRUE COPY OF THE ORDER G.O.(MS)NO.51/12/RD DATED 15.2.2012 ISSUED BY THE FIRST RESPONDENT.

EXT.P7: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE HON'BLE EXCISE MINISTER DATED 18.2.2012.

EXT.P8: TRUE COPY OF THE REPLY RECEIVED BY THE PETITIONER UNDER "SUTHARIYA KERALAM" DATED 22.2.2012.

EXT.P9: TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NO.1541/2009 TO 1547/2009.

EXT.P10:TRUE COPY OF THE ORDER ISSUED BY THE SECRETARY, TAXES DEPARTMENT TO THE 4TH RESPONDENT DATED 23.03.2011.

EXT.P11: TRUE COPY OF THE NOTICE GIVEN BY THE CIRCLE INSPECTOR OF EXCISE TO THE PETITIONER DATED 05.05.2015.

EXT.P11(a): ENGLISH TRANSLATION OF EXT.P11.

EXT.P12: TRUE COPY OF THE CONSENT GIVEN BY THE PETITIONER TO THE DEPUTY COMMISSIONER OF EXCISE, KOLLAM DATED 30.06.2015.

EXT.P12(a): ENGLISH TRANSLATION OF EXT.P12.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

rv

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 6421 of 2012

Dated this the 6th day of October, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record.

2. The petitioner, having given a solvency certificate in respect of an immovable property for the benefit of certain licencees, later was asked by the department to remit an amount of ₹ 16,46,060/- in the light of the default committed by the licencees. As the record reveals; aggrieved, the petitioner filed first a revision, and later, on its dismissal, an appeal before the 4th respondent. The appeal is said to be still pending.

3. Notwithstanding the pendency of the appeal, when the department initiated revenue recovery proceedings, the petitioner filed the present writ petition in 2012 and obtained an interim stay on 15.03.2012. Much water has flowed thereafter.

4. Now, the learned counsel through I.A. No. 13659 of 2015 has brought on record certain documents. On the strength of those documents, the learned counsel would contend that in Ext.P9

judgment, under identical circumstances, the Hon'ble Supreme Court has declared that the earnest money deposit cannot be forfeited. According to him, the petitioner ought to be given the said benefit in the light of the definitive pronouncement of the Apex Court.

5. The learned counsel has also drawn my attention to Ext.P10 proceedings said to have been issued by the department extending the benefit to a similarly placed person. Thus, the learned counsel has urged this Court to dispose of the writ petition with a suitable direction to the respondents to consider the petitioner's case in the light of Exts.P9 and P10.

6. The learned Government Pleader, on his part, has submitted that the appeal filed by the petitioner is still pending, and that the petitioner can as well make his request before the appellate authority, so that there could be a comprehensive consideration of the issue in a statutory appeal.

7. I do find force in the submission of the learned Government Pleader. It is to be borne in mind that the petitioner approached this Court only after his filing the statutory appeal; especially, in the light of the precipitous circumstances, namely, that the department had

initiated revenue recovery proceedings, despite the pendency of the appeal.

8. In my considered view, it meets the ends of justice if the writ petition is disposed of with a suitable direction to the 4th respondent, the appellate authority, to consider the petitioner's appeal in the light of Exts.P9 and P10.

9. The learned counsel for the petitioner has also submitted that concerning the return of earnest money, the 5th respondent has to take a decision.

10. Be that as it may, in the facts and circumstances, having regard to the submissions made by the learned counsel for the petitioner and the learned Government Pleader, this Court disposes of the writ petition with a direction to the 4th respondent, the appellate authority, to consider the petitioner's appeal, keeping in view Exts.P9 and P10, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. It is made clear that the petitioner is at liberty to take all pleas available to him before the appellate authority.

Concerning the petitioner's application said to have been pending before the additional 5th respondent as regards the return of earnest money, the said authority is also directed to consider the petitioner's representation, as expeditiously as possible, duly taking into account Exts.P9 and P10 judgment of the Hon'ble Supreme Court.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv