

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 4130 of 2015 (M)

PETITIONER :

**JOJI JOSEPH, AGED 45 YEARS,
S/O. JOSEPH, PUTHUSSERY HOUSE, KANJOOR,
KANJOOR P.O., ERNAKULAM - 683 575.**

**BY ADVS.SRI.JIJO JOSEPH
SRI.K.RAJESH**

RESPONDENTS :

- 1. THE COMMERCIAL TAX OFFICER (WC & LT)
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERY - 682002**
- 2. THE INTELLIGENCE OFFICER,
DEPARTMENT OF COMMERCIAL TAXES, SQUAD NO.1
MATTANCHERY AT MINI CIVIL STATION, ALUVA-683010**
- 3. THE VAT APPELLATE TRIBUNAL,
ADDITIONAL BENCH, ERNAKULAM- 682015.**
- 4. THE BRANCH MANAGER,
FEDERAL BANK LIMITED, KANJOOR BRANCH,
KANJOOR P.O., ERNAKULAM DISTRICT.**

BY GOVERNMENT PLEADER SMT. LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE PENALTY ORDER DATED 27/12/2011 OF THE 2ND RESPONDENT IMPOSING PENALTY OF THE SAME AMOUNT OF SECURITY DEPOSIT OF RS.6,31,1250/- AND ORDERED TO ADJUST THE BANK GUARANTY (SECURITY DEPOSIT) TOWARDS THE PENALTY IMPOSED.

EXHIBIT-P2: TRUE COPY OF THE APPEAL TO THE APPELLATE TRIBUNAL FILED BY THE PETITIONER DATED 15/11/2012.

EXHIBIT-P3: TRUE COPY OF THE JUDGMENT DATED 17/11/2012 IN W.P(C) 27239/2012.

EXHIBIT-P4: TRUE COPY OF THE DISMISSAL OF THE EXHIBIT-P2 APPEAL IN DEFAULT DATED 12/01/2015 PASSED BY THE HONOURABLE VAT APPELLATE TRIBUNAL ADDITIONAL BENCH ERNAKULAM T.A (VAT) 1154/2012.

EXHIBIT-P5: TRUE COPY OF THE RESTORATION APPLICATION R.A 3/2015 FILED ON 31/01/2015 TO RESTORE EXHIBIT-P2 APPEAL BEFORE THE HONOURABLE VAT APPELLATE TRIBUNAL ADDITIONAL BENCH ERNAKULAM IN T.A (VAT) 1154/2012.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4130 OF 2015 (M)

Dated this the 9th day of February, 2015

J U D G M E N T

Against Ext.P1 order of penalty confirmed against the petitioner, under the KVAT Act, the petitioner had preferred a revision before the revisional authority. The said revision came to be dismissed by the first revisional authority. Thereafter, the petitioner preferred Ext.P2 appeal before the Appellate Tribunal. When recovery steps were initiated against the petitioner pending disposal of the appeal by the 3rd respondent Tribunal, the petitioner approached this Court through W.P.(C).No.27239/2012, which was disposed by Ext.P3 judgment directing the respondent to dispose the appeal and not to invoke the bank guarantee pending disposal of the said appeal. It is submitted by counsel for the petitioner that when the appeal was posted for hearing before the Tribunal, counsel for the petitioner could not appear and consequently, by Ext.P4 order, the appeal came to be dismissed for default. The petitioner has since filed Ext.P5 restoration application for restoring the appeal before the tribunal. The apprehension of the petitioner, however, is that pending consideration of the restoration application by the 3rd respondent tribunal, recovery steps may be initiated against the petitioner by way of invoking the

bank guarantee furnished by the petitioner.

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

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I direct the 3rd respondent Appellate tribunal to consider and pass orders on Ext.P5 restoration application preferred by the petitioner before it, within a period of one month from the date of receipt of a copy of this judgment. It is made clear that till such time as the 3rd respondent tribunal passes orders as directed in this judgment, and communicates the same to the petitioner, the bank guarantee furnished by the petitioner shall not be invoked. The petitioner shall, however, ensure that the bank guarantee is kept alive during the pendency of the proceedings bore the 3rd respondent tribunal.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp