

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No.4338 of 2015 (N)

PETITIONER:

**THERUVATH BUILDERS CONTRACTORS & ENGINEERS,
T.C.9/1226,MANGALAM LANE,SASTHAMANGALAM,
THIRUVANANTHAPURAM - 695 010,REPRESENTED BY
ITS MANAGING PARTNER T.U.CHERIYAN.**

BY ADV. SRI.RAMESH CHERIAN JOHN

RESPONDENTS:

- 1. THE DEPUTY REGISTRAR,CUSTOMS,
EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
WTC BUILDING,FKCCI COMPLEX,K.G.ROAD,
BANGALORE - 560 009.**
- 2. THE JOINT COMMISSIONER,
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & CUSTOMS
ICE BHAVAN,THIRUVANANTHAPURAM,PIN-695001.**
- 3. THE CUSTOMS,
EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
WTC BUILDING,FKCCI COMPLEX,K.G.ROAD,
BANGALORE - 560 009.**

R2 BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EXCISE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No.4338 of 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE SHOW CAUSE NOTICE DATED 13/12/2006.

EXT.P2:TRUE COPY OF THE ASSESSMENT ORDER DATED 11/04/2008.

EXT.P3:TRUE COPY OF THE ORDER DATED 30/10/2014 ISSUED BY THE
COMMISSIONER (APPEALS).

EXT.P4:TRUE COPY OF THE ARGUMENT NOTE FILED BEFORE THE
COMMISSIONER (APPEALS).

EXT.P5:TRUE COPY OF THE FORM OF APPEAL, STATEMENT OF FACTS AND
GROUNDS OF APPEAL.

EXT.P6:TRUE COPY OF THE PETITION FOR STAY.

EXT.P7:TRUE COPY OF THE PETITION DATED 31/12/2014 FILED BEFORE THE
TRIBUNAL REQUESTING TO ADMIT THE APPEAL.

EXT.P8:TRUE COPY OF THE DEFECT MEMO DATED NIL ISSUED BY THE 1ST
RESPONDENT.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4338 OF 2015 (N)

Dated this the 17th day of March, 2015

J U D G M E N T

The petitioner, who had approached this Court challenging Ext.P8 notice, that was issued by the Appellate Tribunal requiring the petitioner to pay an amount of 7.5% of the tax amount confirmed against him by Ext.P3 order, submits that, pursuant to the interim order of this Court dated 11.2.2015, he has already approached the Appellate Tribunal and remitted the required fee of 7.5% of the tax amount confirmed against him by Ext.P3 order. He submits that the appeal before the Tribunal will now be numbered and taken up for consideration. In the meanwhile, however, the respondents have issued recovery notices proposing recovery of the amounts confirmed against the petitioner by Ext.P3 order.

2. I have heard the learned counsel appearing for the petitioner as also the learned Standing counsel appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and also taking note of the

fact that the petitioner has since approached the Appellate Tribunal through a duly constituted appeal, and also remitted the required fee applicable for maintaining the appeal before the Tribunal, I dispose the writ petition with the following directions:

(i) The 3rd respondent Tribunal is directed to consider the appeal and the stay petition filed by the petitioner, before it, on merits.

(ii) In view of the fact that the appeal filed by the petitioner is currently pending before the Appellate Tribunal, the respondents shall not pursue the recovery steps against the petitioner in respect of the amounts confirmed against him by Ext.P3 order.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp