

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 4728 of 2015 (M)

PETITIONER(S)/PETITIONER:

**M/S. HIND ERECTORS, AGED 57 YEARS
1ST FLOOR, DEVASWOM BUILDING, KARUNAGAPPALLY
KOLLAM-690518
(REPRESENTED BY ITS MANAGING PARTNER).**

**BY ADVS.SMT.R.CHITRA
SRI.B.RAVINDRAN NAIR
SRI.G.ANANTHANARAYANAN**

RESPONDENT(S)/RESPONDENTS:

- 1. UNION OF INDIA,
REPRESENTED BY REVENUE SECRETARY
MINISTRY OF FINANCE, NEW DELHI-110001.**
- 2. THE COMMISSIONER OF CENTRAL EXCISE & CUSTOMS(APPEALS),
CR BUILDINGS, I S PRESS ROAD, COCHIN-682018.**
- 3. JOINT COMMISSIONER OF CENTRAL EXCISE & CUSTOMS,
ICE BHAVAN, PRESS CLUB ROAD, TRIVANDRUM-695001.**
- 4. ASSISTANT COMMISSIONER OF CENTRAL EXCISE & CUSTOMS,
VARINJAM TOWERS, RESIDENCY ROAD, KOLLAM-690001.**
- 5. SUPERINTENDENT OF CENTRAL EXCISE,
SERVICE TAX RANGE-III, KOLLAM-691001.**
- 6. THE ACCOUNTS OFFICER,
M/S.KMML, SANKARAMANGALAM, CHAVARA
KOLLAM-691583.**

R1-R5 BY ADV. SRI.THOMAS MATHEW NELLIMOOTIL,SC,CB EX

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1 TRUE COPY OF THE APPEAL A NO.03/ST/TVM/2011 IN RESPECT OF O-IN-O 46/2010 ST DT.15/11/2010 ALONG WITH THE STAY PETITION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT WITHOUT ANNEXURES.

EXT.P2 TRUE COPY OF THE LETTER DT.01/02/2011 FROM THE RESPONDENT NO.2 CONFIRMING THE ACCEPTANCE OF THE APPEAL NO.03/ST/TVM/2011

EXT.P3 TRUE COPY OF THE LETTER DT.31/10/2011,ISSUED TO THE 2ND RESPONDENT INTIMATING PERSONAL HEARING ON 15/11/2011

EXT.P4 TRUE COPY OF THE LETTER DT.28/10/2013,WRITTEN BY THE PETITIONER TO THE RESPONDENT NO.5

EXT.P5 TRUE COPY OF THE NOTICE DT.15/01/2015 ISSUED UNDER SECTION 87 (B)OF CHAPTER V OF FINANCE ACT,1994 BY THE 4TH RESPONDENT TO THE 6TH RESPONDENT

EXT.P6 TRUE COPY OF THE JUDGMENT DELIVERED BY THE HONOURABLE HIGH COURT OF KERALA IN WP(C)3163 OF 2015(U).

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.4728 OF 2015 (M)

Dated this the 13th day of February, 2015

J U D G M E N T

Against an order confirming a demand of service tax on the petitioner, he has filed Ext.P1 appeal and stay petition before the 2nd respondent. The apprehension of the petitioner is that the respondents will initiate coercive steps for recovery of the amounts confirmed against the petitioner, by the order against which the appeal has been preferred, pending disposal of the stay petition by the 2nd respondent.

2. I have heard Smt.Chitra R., the learned counsel for the petitioner and Sri.Thomas Mathew Nellimoottil, the learned Standing counsel for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I dispose the writ petition with the following directions:

- i. The 2nd respondent shall consider and pass orders on the stay application preferred by the petitioner within

a period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner.

ii. Recovery steps for recovery of amounts confirmed against the petitioner, by the order against which Ext.P1 appeal has been filed, shall be kept in abeyance till orders are passed by the 2nd respondent as directed above and communicated to the petitioner.

iii. The order to be passed by the 2nd respondent shall be a reasoned one adverting to the contentions of the petitioner regarding existence of a prima facie case for a stay of recovery pending disposal of the appeal/revision.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp