

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 5883 of 2015 (I)

PETITIONER:

**M/S.AKBAR TRAVELS OF INDIA (P) LTD.,
OUR TOWERS, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695010
REPRESENTED BY ITS GENERAL MANAGER.**

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:

- 1. COMMISSIONER OF CENTRAL EXCISE (APPEALS),
KOCHI-682018.**
- 2. ADDITIONAL COMMISSIONER,
OFFICE OF THE COMMISSIONER TO
CENTRAL EXCISE AND CUSTOMS,
I.C.E.BHAVAN, PRESS CLUB ROAD
THIRUVANANTHAPURAM-695001.**
- 3. SUPERINTENDENT,
OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE,
SERVICE TAX, GROUP B, 3RD FLOOR
I.C.E.BHAVAN, PRESS CLUB ROAD
THIRUVANANTHAPURAM-695001.**

**BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,
BY SRI.RENJITH J.KOSHY, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 17.10.2011 ISSUED
BY THE 2ND RESPONDENT TO THE PETITIONER**
- EXT.P2 TRUE COPY OF THE REPLY TO THE SHOW CAUSE NOTICE SENT BY
THE PETITIONER TO THE 2ND RESPONDENT,DATED 17.11.2011**
- EXT.P3 TRUE COPY OF THE ORDER DATED 13.02.2014 PASSED BY THE 2ND
RESPONDENT**
- EXT.P4 TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT**
- EXT.P5 TRUE COPY OF THE APPLICATION FOR CONDONATION OF DELAY IN
FILING EXT.P4 APPEAL**
- EXT.P6 TRUE COPY OF THE APPLICATION FOR STAY OF RECOVERY AND
DISPENSING OF DEPOSIT OF SERVICE TAX,INTEREST AND PENALTIES
FILED ALONG WITH EXT.P4 APPEAL**
- EXT.P7 TRUE COPY OF THE LETTER DATED 15.01.2015 ISSUED BY THE 3RD
RESPONDENT TO THE PETITIONER**
- EXT.P8 TRUE COPY OF THE LETTER DATED 16.02.2015 FROM THE 3RD
RESPONDENT TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.5883 of 2015

.....
Dated this the 24th day of February, 2015

J U D G M E N T

Against Ext.P3 order of the 2nd respondent confirming a demand of service tax and penalty on the petitioner, the petitioner had preferred Ext.P4 appeal and Ext.P6 stay petition before the 1st respondent. Exts.P7 and P8 are the demand notices. The grievance of the petitioner in the writ petition is that even before considering the stay petition, recovery steps are being initiated by the respondents to recover the amounts confirmed against the petitioner by Ext.P3 order.

2. I have heard Sri.C.P.Mohammed Nias, the learned counsel for the petitioner and Sri.Ranjit J.Kozhy, the learned Standing counsel for Central Board of Excise and customs.

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 1st respondent shall consider and pass orders on Ext.P6 stay petition within a period of two months from the date of receipt of a

copy of this judgment, after hearing the petitioner.

ii. Coercive steps pursuant to Exts.P7 and P8 demand notices shall be kept in abeyance till orders are passed by the 1st respondent as directed above and communicated to the petitioner.

iii. The order to be passed by the 3rd 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.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

