

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 6314 of 2015 (L)

PETITIONER(S):

**M/S.KERALA POLICE HOUSING AND CONSTRUCTION CORPORATION LTD.,
CHANDRASEKHARAN NAIR STADIUM
PALAYAM VIKAS BHAVAN P.O.
THIRUVANANTHAPURAM - 695 033
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR
DR.ALEXANDER JACOB, IPS.**

**BY ADVS.SRI.T.M.SREEDHARAN (SR.)
SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN**

RESPONDENT(S):

- 1. THE JOINT COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX
P.B.NO.13, ICE BHAVAN, PRESS CLUB ROAD
THIRUVANANTHAPURAM - 695 001.**
- 2. THE COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS & SERVICE TAX (APPEALS),
C.R.BUILDING, I.S.PRESS ROAD
COCHIN - 682 018.**
- 3. THE SUPERINTENDENT OF CENTRAL EXCISE, SERVICE TAX 'B' GROUP,
3RD FLOOR, ICE BHAVAN, PRESS CLUB ROAD
THIRUVANANTHAPURAM - 695 001.**

**R1-R3 BY ADV. SRI.TOJAN J.VATHIKULAM,SC,C.B. EXCISE
SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EXCISE**

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1: TRUE COPY OF THE ADJUDICATION ORDER NO.20/2011/ST(JC) DATED 31/03/2011 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P2: A TRUE COPY OF THE ORDER NO.23/2013/ST(ADC) DATED 17/06/2013 PASSED BY THE 1ST RESPONDENT.

EXHIBIT P3: A TRUE COPY OF THE ORDER NOS.29 & 30/2013/2013/ST(ADC) DATED 31/07/2013 PASSED BY THE 1ST RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT AS PER MEMORANDUM OF APPEAL IN MAY 2011.

EXHIBIT P4(A):TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT AS PER MEMORANDUM OF APPEAL IN SEPTEMBER, 2013.

EXHIBIT P4(B): TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT AS PER MEMORANDUM OF APPEAL IN JANUARY, 2014.

EXHIBIT P5: TRUE COPY OF THE STAY PETITION SUBMITTED BEFORE THE 2ND RESPONDENT IN MAY, 2011.

EXHIBIT P5(A):TRUE COPY OF THE STAY PETITION SUBMITTED BEFORE THE 2ND RESPONDENT IN SEPTEMBER, 2013.

EXHIBIT P5(B): TRUE COPY OF THE STAY PETITION SUBMITTED BEFORE THE 2ND RESPONDENT IN JANUARY, 2014.

EXHIBIT P6: TRUE COPY OF THE SHOW CAUSE NOTICE O.C.NO.193 DATED 16/02/2015 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

STK

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.6314 of 2015

.....
Dated this the 27th day of February, 2015

J U D G M E N T

Against Exts.P1, P2 and P3 orders confirming a demand of service tax and penalty on the petitioner, the petitioner had preferred Ext.P4, P4(a) and P4(b) appeals and Ext.P5, P5(a), P5(b) stay petitions before the 2nd respondent. 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 Exts.P1, P2 and P3 orders.

2. I have heard Sri.T.M.Sreedharan, the learned Senior counsel for the petitioner and Sri.Tojan J.Vathikulam, 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 2nd respondent shall consider and pass orders on Ext.P5, P5(a), P5(b) stay petitions within a period of two 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 Exts.P1, P2 and P3 orders 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 advertent 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/

