

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. 6872 of 2015 (H)

PETITIONER :

**M/S.KULATHUNKAL MOTORS (SERVICE CENTRE),
MARKET ROAD, KURAVANKONAM, TRIVANDRUM - 695003
REPRESENTED BY MANAGING PARTNER**

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

RESPONDENTS :

- 1. UNION OF INDIA, REPRESENTED BY REVENUE
MINISTRY OF FINANCE, NEW DELHI - 110001.**
- 2. THE COMMISSIONER OF CENTRAL EXCISE & CUSTOMS (APPEALS),
CR BUILDINGS, IS PRESS ROAD, COCHIN - 682018.**
- 3. COMMISSIONER OF CENTRAL EXCISE & CUSTOMS,
ICE BHAVAN, PRESS CLUB ROAD, TRIVANDRUM - 695001.**
- 4. ADDITIONAL COMMISSIONER OF CENTRAL EXCISE & CUSTOMS,
ICE BHAVAN, PRESS CLUB ROAD, TRIVANDRUM - 695001.**
- 5. JOINT COMMISSIONER OF CENTRAL EXCISE & CUSTOMS,
ICE BHAVAN, PRESS CLUB ROAD, TRIVANDRUM - 695001.**
- 6. ASSISTANT COMMISSIONER OF CENTRAL EXCISE & CUSTOMS,
ICE BHAVAN, PRESS CLUB ROAD, TRIVANDRUM - 695001.**
- 7. SUPERINTENDENT OF CENTRAL EXCISE & CUSTOMS,
ICE BHAVAN, PRESS CLUB ROAD, TRIVANDRUM - 01**

**R2 TO R 7 BY ADV. SRI.TOJAN J.VATHIKULAM,SC,
BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,**

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

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPIES OF THE LETTER DATED 07/04/2014 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER ACKNOWLEDGING THE RECEIPT OF THE APPEALS AND STAY PETITIONS AND GRANTING APPEAL NO. 42/57/TVM/2014 FILED AGAINST ORDER IN ORIGINAL NO. 83 & 84/2013-14 ST (ADC)
- EXT.P2: TRUE COPIES OF THE LETTER DATED 25/01/2010 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER ACKNOWLEDGING THE RECEIPT OF THE APPEALS AND STAY PETITIONS AND GRANTING APPEAL NO. 05/ST/TVM/2010 FILED AGAINST ORDER IN ORIGINAL NO. 55/2009 ST (JC)
- EXT.P3: TRUE COPIES OF THE LETTER DATED 06/02/2013 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER ACKNOWLEDGING THE RECEIPT OF THE APPEALS AND STAY PETITIONS AND GRANTING APPEAL NO. 8/ST/TVM/2013 FILED AGAINST ORDER IN ORIGINAL NO. 07/2012 ST (AC)
- EXT.P4: TRUE COPIES OF THE LETTER DATED 16/07/2013 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER ACKNOWLEDGING THE RECEIPT OF THE APPEALS AND STAY PETITIONS AND GRANTING APPEAL NO. 49/ST/TVM/2013 FILED AGAINST ORDER IN ORIGINAL NO. 06/2013 ST (AC).
- EXT.P5: TRUE COPIES OF THE LETTER DATED 23/04/2012 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER ACKNOWLEDGING THE RECEIPT OF THE APPEALS AND STAY PETITIONS AND GRANTING APPEAL NO. 42/ST/TVM/2012 FILED AGAINST ORDER IN ORIGINAL NO. 06/2012-ST.
- EXT.P6: TRUE COPIES OF THE LETTER DATED 16/03/2012 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER ACKNOWLEDGING THE RECEIPT OF THE APPEALS AND STAY PETITIONS AND GRANTING APPEAL NO. 20/ST/TVM/2012 FILED AGAINST ORDER IN ORIGINAL NO. 02/2012-ST (ADC).
- EXT.P7: TRUE COPIES OF THE LETTER DATED 19/05/2014 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER ACKNOWLEDGING THE RECEIPT OF THE APPEALS AND STAY PETITIONS AND GRANTING APPEAL NO. 61/ST/TVM/2014 FILED AGAINST ORDER IN ORIGINAL NO. 95 & 96/2013-14-ST (ADC).
- EXT.P8: TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER AT THE TIME OF PERSONAL HEARING BEFORE THE SECOND RESPONDENT ON 09/12/2014, FOR APPEAL NOS. 20/ST/TVM/2012, 42/ST/TVM/2012, 08/ST/TVM/2013, 49/ST/TVM/2013, 61/ST/TVM/2014.

- EXT.P9: TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER AT THE TIME OF PERSONAL HEARING BEFORE THE SECOND RESPONDENT ON 09/12/2014, FOR APPEAL NO. 05/ST/TVM/2010.
- EXT.P10: TRUE COPY OF THE RECOVERY NOTICE DATED 23/02/2015 ISSUED TO THE PETITIONER FROM RESPONDENT NO. 7 AS PER TH ORDERS OF THE RESPONDENT NO. 3 DEMANDING PAYMENT ON THE BASIS OF 7 ORDER IN ORIGINALS 55/2009 ST (JC), 02/2012 ST (ADC), 06/2012 ST (AC), 07/2012 ST (AC), 06/2013 ST (ADC), 83 & 84/2013 ST (ADC) & 95 & 96/2013 ST (ADC).
- EXT.P11: TRUE COPY OF THE JUDGMENT PRONOUNCED BY THE HON'BLE HIGH COURT OF KERALA IN THE CASE OF KERA F E D VS.UOI WPC NO. 764 OF 2015 (U).
- EXT.P12: COPY OF THE APPEAL AND STAY PETITION A NO. 42/ST/TVM/2014. AGGRIVED AGAINST ORDER IN ORIGINAL NO. 83 & 84/2013-14 ST (ADC) DT 14/2/2014 FILED BY THE PETITIONER TO THE R2.
- EXT.P13: COPY OF THE APPEAL STAY PETITION A 05/ST/TVM/2010. AGGRIVED AGAINST ORDER IN ORIGINAL NO. 55/2009 ST (JC) DT 9/12/2009 FILED BY THE PETITINER TO THE R2.
- EXT.P14: COPY OF THE APPEAL AND STAY PETITION A. NO. 8/ST/TVM/2013. AGGRIVED AGAINST ORDER IN ORIGINAL NO. 07/2012 ST (AC) DT 15/2/2012 FILED BY THE PETITINER TO THE R2.
- EXT.P15: COPY OF THE APPEAL AND STAY PETITION A. NO. 49/ST/TVM/2013. AGGRIVED AGAINST ORDER IN ORIGINAL NO. 06/2013 ST (ADC) DT 23/5/2013 FILED BY THE PETITINER TO THE R2.
- EXT.P16: COPY OF THE APPEAL AND STAY PETITION A. NO. 42/ST/TVM/2012. AGGRIVED AGAINST ORDER IN ORIGINAL NO. 06/2012 ST (ADC) DT 27/01/2012 FILED BY THE PETITINER TO THE R2.
- EXT.P17: COPY OF THE APPEAL AND STAY PETITION A. NO. 20/ST/TVM/2012. AGGRIVED AGAINST ORDER IN ORIGINAL NO. 02/2012 ST (ADC) DT 18/01/2012 FILED BY THE PETITINER TO THE R2.
- EXT.P18: COPY OF THE APPEAL AND STAY PETITION A. NO. 61/ST/TVM/2014. AGGRIVED AGAINST ORDER IN ORIGINAL NO. 95 & 96/2013-14 ST (ADC) DT 23/3/2014 FILED BY THE PETITINER TO THE R2.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.6872 OF 2015 (H)

Dated this the 17th day of March, 2015

J U D G M E N T

Against the orders confirming a demand of service tax and penalty on the petitioner, the petitioner has preferred Exts.P12 to P18 appeals and stay petitions before the 2nd respondent. It is the case of the petitioner that even prior to considering the stay petitions, recovery steps have been taken by the respondents for recovery of the amounts confirmed against the petitioner by the orders against which the appeals have been filed.

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

3. 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:

1. The 2nd respondent shall consider and pass orders on the stay petitions filed by the petitioner within a period of two months from the date of receipt of a copy

of this judgment, after hearing the petitioner.

2.Recovery steps for recovery of amounts confirmed against petitioner pursuant to the orders against which appeals are filed, shall be kept in abeyance till orders are passed by the 2nd respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp