

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 7321 of 2015 (M)

PETITIONER(S) :

- 1. JOSEPH TITO,
NERIYAMPARAMPIL HOUSE,
THURUTHY, CHANGANACHERRY**
- 2. P.O. SABU,
PUTHENPURA
THALAYAZHAM P.O.,
VAIKKAM.**

**BY ADVS.SRI.V.V.GEORGEKUTTY
SRI.AJI V. DEV**

RESPONDENT(S) :

- 1. INTELLIGENCE OFFICER
SQUAD NO-1, COMMERCIAL TAXES,
MATTANCHERRY - 683 101.**
- 2. THE COMMERCIAL TAX OFFICER-II,
COMMERCIAL TAXES, 1ST CIRCLE,
KALAMASSERY - 682 024.**
- 3. DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERRY - 682 002.**
- 4. DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, ERNAKULAM - 682 015.**
- 5. DEPUTY TAHSILDAR
REVENUE RECOVERY, VAIKKAM - 686 007.**

R1 TO R5 BY GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1- A TRUE COPY OF PENALTY ORDER PASSED FOR THE YEAR 2005-06
DATED 16.1.2012.
- EXT. P1(a)- A TRUE COPY OF PENALTY ORDER PASSED FOR THE YEAR 2006-07
DATED 16.1.2012.
- EXT. P2- TRUE COPY OF THE ASSESSMENT ORDER PASSED FOR THE YEAR
2005-06 DATED 14.7.2014.
- EXT. P2(a)- TRUE COPY OF THE ASSESSMENT ORDER PASSED FOR THE YEAR
2006-07 DATED 14.7.2014.
- EXT. P3- TRUE COPIES OF THE STATUTORY REVISIONS FILED ALONG WITH
PETITIONS FOR DELAY CONDONATION, EARLY HERING AND STAY OF
COLLECTION OF PENALTY FOR THE YEAR 2005-06 DATED 4.2.2015.
- EXT. P3(a)- TRUE COPIES OF THE STATUTORY REVISION FILED ALONG WITH
PETITIONS FOR DELAY CONDONATION, EARLY HERING AND STAY OF
COLLECTION OF PENALTY FOR THE YEAR 2006-07 DATED 4.2.2015.
- EXT. P4- TRUE COPIES OF THE STATUTORY APPEALS FILED ALONG WITH
PETITIONS FOR DELAY CONDONATION, EARLY HERING AND STAY OF
COLLECTION OF TAX FOR THE YEAR 2005-06 DATED 4.2.2015.
- EXT. P4(a)- TRUE COPIES OF THE STATUTORY APPEALS FILED ALONG WITH
PETITIONS FOR DELAY CONDONATION, EARLY HERING AND STAY OF
COLLECTION OF TAX FOR THE YEAR 2006-07 DATED 4.2.2015.
- EXT. P5- A TRUE COPY OF THE INTERLOCUTORY ORDER ISSUED BY THE 4TH
RESPONDENT GRANTING CONDITIONAL STAY DATED 13.2.2015.
- EXT. P6- A TRUE COPY OF NOTICE ISSUED UNDER THE REVENUE RECOVERY
ACT IN FORM -1 DATED 27.10.2015.
- EXT. P6(a)- A TRUE COPY OF NOTICE ISSUED UNDER THE REVENUE RECOVERY
ACT IN FORM -10 DATED 27.10.2015.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7321 OF 2015 ()

Dated this the 9th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 conditional order of stay granted by the Assistant Commissioner (Appeals) in an appeal preferred against Exts.P2 and P2(a) assessment orders passed against the petitioners. The contention of the petitioners in the writ petition is that Ext.P5 order was passed in a mechanical manner without considering the prima facie case of the petitioners on merits and therefore pursuant to an erroneous exercise of discretion by the Appellate authority.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader 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 find that in Ext.P5 order, the Appellate authority has in fact gone into the contentions of the petitioners in the appeal memorandum and stay petition. It was

thereafter that the Appellate authority came to the conclusion that the petitioner company was liable to take registration under the KVAT Act. There is also a specific finding that the petitioner did not cooperate with the Department while completing the assessment and hence the Assessing authority was forced to complete the assessment using the available material on record. On a consideration of the findings of the Appellate authority, I am of the view that it cannot be said that the Appellate authority had not exercised his discretion in a valid manner. I, therefore, do not see any reason to interfere with Ext.P5 order of the Appellate authority save to the limited extent of granting the petitioner some more time to comply with the directions in Ext.P5 order. Resultantly, the writ petition, in its challenge against Ext.P5 order, is dismissed save for the limited modification of permitting the petitioner to comply with the directions in Ext.P5 order on or before 31.3.2015.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp