

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 7743 of 2015 (P)

PETITIONER(S) :

**ETA GENERAL PRIVATE LIMITED,
BUILDING NO. 30/2001 D, ATHAM FIRST FLOOR,
PONNURUNNI EAST, VYTILA,
REPRESENTED BY ITS AUTHORIZED SIGNATORY AND
DEPUTY MANAGER (ACCOUNTS) M.A.SURESH.**

**BY ADVS.SRI.JOSEPH PRABAKAR
SRI.V.K.SHAMUSUDHEEN
SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN**

RESPONDENT(S) :

- 1. DEPUTY COMMISSIONER (APPEALS) II,
COMMERCIAL TAXES, ERNAKULAM, PIN - 682 015.**
- 2. INTELLIGENCE OFFICER, SQUAD NO.III,
COMMERCIAL TAXES, ERNAKULAM, PIN - 682 015.**
- 3. THE MANAGER
THE JAMMU & KASHMIR BANK LTD, M.G.ROAD,
ERNAKULAM, PIN - 682 035.**

R1 & R2 BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF PURCHASE ORDER NO.VRV/AC 004-12 DATED 02.03.2012
PLACED BY PRT HOTELS (P) LTD.
- P2: TRUE COPY OF INVOICE CUM DELIVERY CHALLAN DATED 10.04.2012.
- P3: TRUE COPY OF THE NOTICE DATED 13.02.2012 ISSUED TO THE PTR UNDER
SECTION 47(2) OF THE KVAT ACT.
- P4: TRUE COPY OF LETTER DATED 18.04.2012 SUBMITTED BY THE PETITIONER
IN REPLY TO EXHIBIT P3.
- P5: TRUE COPY OF THE EXTENSION OF BANK GUARANTEE MADE ON 30.04.2014.
- P6: TRUE COPY OF LETTER DATED 24.11.2014 ISSUED BY THE 2ND RESPONDENT
TO THE 3RD RESPONDENT.
- P7: TRUE COPY OF ORDER DATED 20.05.2014 ISSUED BY THE 2ND RESPONDENT.
- P8: TRUE COPY OF APPEAL FILED BY THE PETITIONER BEFORE
THE 1ST RESPONDENT.
- P9: TRUE COPY OF THE INTERIM APPLICATION FOR STAY FILED ALONG WITH
EXHIBIT P8 APPEAL.
- P10: TRUE COPY OF THE SALES INVOICE OF THE PETITIONER FOR RETURN
MONTH APRIL 2012.
- P11: TRUE COPY OF ORDER DATED 23.02.2015 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.7743 of 2015 (P)

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Dated this the 11th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P11 conditional order of stay passed by the 1st respondent in a stay petition filed along with an appeal against Ext.P7 order of penalty imposed on the petitioner.

2. It is the case of the petitioner that, at the time of detention of the goods he had already furnished a Bank Guarantee for the entire security deposit amount demanded, and the said Bank Guarantee is still in force. Under these circumstances, it is his contention that there was no justification for the 1st respondent to pass a conditional order requiring him to make further payment of 30%, of the amounts confirmed against him by the order of penalty, as a condition for stay of recovery of the balance amount.

3. I have heard Sri.Shamsudheen, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, and taking note of the fact that, the entire amount of penalty that is confirmed on the

petitioner is already secured by a Bank Guarantee that was furnished by the petitioner, I dispose the writ petition with a direction to the 1st respondent to consider and pass orders on Ext.P8 appeal preferred by the petitioner before him, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

The recovery steps, for recovery of the amounts confirmed against the petitioner by the order of penalty, shall be kept in abeyance, till such time as the 1st respondent passes orders, as directed above, and communicates the same to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/12/03/