

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. 8251 of 2015 (F)

PETITIONER:

**BEENA SUNNY,
PROPRIETOR,
SISO MALL,
DOOR NO.29/1173,
S.A.ROAD,
JANATHA JN.,
VYTTILA,
ERNAKULAM.**

**BY ADVS.SRI.KRISHNADAS P. NAIR
SRI.HARIDAS P.NAIR
SMT.K.L.SREEKALA
SRI.M.A.VINOD
SRI.M.RAJESH KUMAR
SRI.K.R.RAMESH**

RESPONDENTS:-

- 1. THE COMMERCIAL TAX OFFICER,
FIRST CIRCLE,
KVAT CIRCLE-I,
ERNAKULAM.**
- 2. THE INTELLIGENCE OFFICER,
SQUAD NO.VIII,
DEPT. COMMERCIAL TAXES,
ERNAKULAM - 682 018.**
- 3. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES,
ERNAKULAM - 682 018.**

R1 TO R3 BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

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

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. THE TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE PETITIONER ISSUED BY THE 1ST RESPONDENT IS PRODUCED.
- EXHIBIT P2. THE PETITIONER SUBMITTED THE REGISTRATION RENEWAL APPLICATION ON 30.04.2014.
- EXHIBIT P3. THE TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT IS DATED 28.11.2013.
- EXHIBIT P4. THE PETITIONER PAID THE COMPOUNDING FEE OF RS.1,50,000.00 ON 09.01.2014, AS PER THE DIRECTIONS OF THE 2ND RESPONDENT.
- EXHIBIT P5. TRUE COPY OF THE REVISED NOTICE DATED 08.12.2014 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P6. TRUE COPY OF THE NOTICE DATED 22.11.2014 DATED ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P7. THE TRUE COPY OF THE ORDER DATED 27.12.2014 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P8. THE TRUE COPY OF THE ORDER DATED 15.01.2015 OF THE HON'BLE HIGH COURT.
- EXHIBIT P9. THE TRUE COPY OF THE ORDER DATED 21.02.2015 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P10. THE TRUE COPY OF THE REVISION FILED BY THE PETITIONER TO THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 8251 of 2015 (F)

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Dated this the 17th day of March, 2015

JUDGMENT

This writ petition was filed challenging Ext.P9 conditional order of stay passed by the Assistant Commissioner (Appeals), in a stay petition filed along with the appeal against Ext.P7 order of assessment.

2. The challenge in the writ petition is essentially that, while passing Ext.P9 order, the Assistant Commissioner (Appeals) had not exercised his discretion validly while directing the petitioner to deposit 30% of the outstanding demand, as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner by Ext.P7 assessment order. Although, various contentions are raised in the writ petition against Ext.P9 order, on a perusal of the same, I find that in Ext.P9 order, the Assistant Commissioner (Appeals) has considered the contentions of the petitioner in the stay petition, and gone into a prima facie consideration of the merits of the matter, before coming to the conclusion that, the petitioner would be required to pay 30% as a condition for the grant of stay. I do not find any erroneous exercise of discretion by the Assistant Commissioner (Appeals), warranting an interference with Ext.P9 order in these proceedings under Article 226 of the Constitution of India. Thus,

the writ petition, in its challenge against Ext.P9 order, fails and it is accordingly dismissed.

3. The learned counsel for the petitioner would submit that, the petitioner requires some time to comply with the directions in Ext.P9 order. Taking into account the plea of financial hardship urged on behalf of the petitioner, I permit the petitioner to comply with the conditions in Ext.P9 order, on or before 31.03.2015. Save for this limited modification, the writ petition, in its challenge against Ext.P9 order, is otherwise dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/17/03/

