

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936**

**WP(C).No. 8701 of 2015 (K)**  
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**PETITIONER(S):**  
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**M/S KATTUMADOM HARDWARES, AGED 40 YEARS  
IRRITY, KANNUR  
REPRESENTED BY ITS MANAGING PARTNER ABDUL SHUKOOR.**

**BY ADV. SRI.RAJESH NAMBIAR**

**RESPONDENT(S):**  
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- 1. COMMERCIAL TAX OFFICER  
KUTHUPARAMBA, PIN-670004**
- 2. VALUE ADDED TAX APPELLATE TRIBUNAL,  
ADDL BENCH, PALAKKAD,  
REPRESENTED BY ITS REGISTRAR/SECRETARY,  
PIN-678002**
- 3. VALUE ADDED TAX APPELLATE TRIBUNAL  
ADDL. BENCH, KOZHIKODE  
REPRESENTED BY ITS REGISTRAR/SECRETARY.  
PIN-673701**
- 4. INSPECTING ASSISTANT COMMISSIONER,  
DEPARTMENT OF COMMERCIAL TAXES, KANNUR.  
PIN-670001**

**BY GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**MJS**

**WP(C).No. 8701 of 2015 (K)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- P1 - TRUE COPY OF THE ASSESSMENT ORDER DT. 31.12.10.**
- P2 - TRUE COPY OF THE ORDER OF THE DY COMMISSIONER (APPEALS) KOZHIKODE DT. 02.7.11.**
- P3 - TRUE COPY OF THE APPEAL MEMORANDUM PENDING BEFORE THE 4TH RESPONDENT.**
- P4 - TRUE COPY OF THE REVISED ASSESSEMENT ORDER.**
- P5 - TRUE COPY OF THE REVENUE RECOVERY NOTICE DT. 09.6.14.**
- P6 - TRUE COPY OF THE AFFIDAVIT AND STAY PETITION FILED BEFORE THE 2ND RESPONDENT.**
- P7 - TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DT. 09.7.14 IN WPC 17488/14.**
- P8 - TRUE COPY OF THE ORDER DT. 18.9.14 IN EXT. P7 STAY PETITION.**

**RESPONDENT(S)' EXHIBITS**  
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**NIL**

**//TRUE COPY//**

**P.S. TO JUDGE**

**A.K.JAYASANKARAN NAMBIAR, J.**

.....  
**W.P.(C) No. 8701 of 2015 (K)**

.....  
Dated this the 19<sup>th</sup> day of March, 2015

**JUDGMENT**

The challenge in the writ petition is against Ext.P8 order of the 2<sup>nd</sup> respondent Tribunal, dismissing the stay application preferred by the petitioner, seeking stay pending disposal of the appeal preferred by the petitioner before the said Tribunal.

2. The case of the petitioner in the writ petition is that, while passing Ext.P8 order, the 2<sup>nd</sup> respondent Tribunal did not consider the prima facie case of the petitioner on merits and further, proceeded on a mistaken assumption of facts, to hold that the petitioner had not indicated the tax amounts that had been confirmed against him by the authorities below, the recovery of which, he was seeking to prevent through the filing of the said petition. It is the case of the petitioner, therefore, that in passing Ext.P8 order, the Tribunal did not exercise its discretion validly.

3. I have heard Sri.Rajesh Nambiar, 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

submissions made across the Bar, and taking note of Ext.P4 modified order of assessment passed by the 1<sup>st</sup> respondent, I feel that the ends of justice would be met, if a direction is given to the 3<sup>rd</sup> respondent Tribunal, before which the appeal filed by the petitioner is now stated to have been transferred, to consider Ext.P3 appeal filed by the petitioner on merits, after hearing the petitioner, within a period of four months from the date of receipt of a copy of this judgment.

5.I make it clear that, if the petitioner pays an amount of Rs.75,000/- (Rupees Seventy five thousand only) to the 4<sup>th</sup> respondent, on or before 20.04.2015, recovery steps for recovery of any amounts confirmed against the petitioner, pursuant to Ext.P4 modified assessment order and Ext.P5 revenue recovery notice, shall be kept in abeyance, till such time as orders are passed by the 3<sup>rd</sup> respondent Tribunal, as directed, and communicated to the petitioner.

Sd/-  
**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

AMV/20/03/