IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 9186 of 2015 (W)

PETITIONER :

CORNER GENERATORS SALES & SERVICE PVT LTD.,
HAVING ITS REGISTERED OFFICE AT 39/397, PLOT NO.72,
MAJOR INDUSTRIAL EDSTATE DEVELOPMENT PLOT,
SOUTH KALAMASSERRY P.O., KOCHI-683 104
REPRESENTED BY ITS DIRECTOR-THOMAS GEORGE,
S/O.LATE GEORGE JOHN, RESIDING AT HOUSE NO.48,
AYANI NADA, VIJAYA ROAD, MARADU P.O.,
ERNAKULAM DISTRICT-682 304.

BY ADVS.SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN
SRI.P.T.GIRIJAN
SMT.USHA NARAYANAN

RESPONDENTS :

---

1. THE COMMISSIONER OF INCOME TAX,
REVENUE TOWERS, I.S.PRESS ROAD,
ERNAKULAM NORTH P.O., KOCHI-682 018.

2. THE INCOME TAX OFFICER, WARD-I,
KOCHI, REVENUE TOWERS, I.S.PRESS ROAD,
ERNAKULAM NORTH P.O., KOCHI-682 018.

R1 & R2 BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-06-2015, ALONG WITH WPC. 11917/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 9186 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **TRUE COPY OF THE INCOME TAX RETURNS DATED 22.1.2014 OF THE PETITIONER FOR THE ASSESSMENT YEAR 2013-14.**

EXT.P2: **TRUE COPY OF THE INCOME TAX RETURNS DATED 13.3.2015 OF THE PETITIONER FOR THE ASSESSMENT YEAR 2014-15.**

EXT.P3: **TRUE COPY OF THE NOTICE DATED 2.09.2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

EXT.P4: **TRUE COPY OF THE ORDER DATED 30.10.2014 PASSED BY THE DEBT RECOVERY TRIBUNAL, ERNAKULAM.**

EXT.P5: **TRUE COPY OF THE NOTICE DATED 01.01.2015 ISSUED BY THE OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE, KALAMASSERY RANGE, ERNAKULAM.**

EXT.P6: **TRUE COPY OF THE LETTER DATED 30.1.2015 TO THE SUPERINTENDENT CENTRAL EXCISE, KALAMASSERY.**

EXT.P7: **TRUE COPY OF THE LETTER DATED 03.02.2015 TO THE SUPERINTENDENT CENTRAL EXCISE, KALAMASSERY.**

EXT.P8: **TRUE COPY OF THE LETTER DATED 12.02.2015 TO THE SUPERINTENDENT CENTRAL EXCISE, KALAMASSERY.**

EXT.P9: **TRUE COPY OF THE LETTER DATED 03.02.2015 TO THE SUPERINTENDENT CENTRAL EXCISE, KALAMASSERY.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

W.P.(C) Nos.9186 & 11917 of 2015

Dated this the 11th day of June, 2015

<u>J U D G M E N T</u>

These writ petitions are filed by the one and same Company for the reliefs related to the assessment under the Income Tax Act and to defer the demand for service tax till conclusion of the assessment of income tax.

2. W.P.(C).No.9186/2015 is filed to expedite the income tax assessment for the year 2013-14 and 2014-15. The petitioner submits that, if the assessment is completed, they would be entitled for refund and that can be utilized for discharging the liability of service tax under the Finance Act, 1994.

3. W.P.(C).No.11917/2015 is filed to defer the payment service tax till completion of the income tax assessment under the Income Tax Act.

4. The learned standing counsel for the Income Tax would submit that, with regard to the assessment for the year 2013-14, the other formalities are over. In that view of the matter assessment for the year 2013-14 shall be completed as expeditiously as possible. In respect of the year 2014-15, it is submitted that, formalities not yet over and assessing authority cannot undertake completion unless formalities are over. The learned Standing Counsel would also submit that, the liability of the

petitioner is totally based on independent proceedings. The petitioner cannot act on proceedings under the Income Tax Act to defer the payment of service tax under the Finance Act.

5. Considering the facts and circumstances and hearing the submissions of the learned counsel for the petitioner as well as the learned Standing Counsel for the respondents, these writ petitions are disposed of with the following observations :

W.P.(C).No.11917/2015

The assessment for the year 2013-14 shall be completed within three months. In respect of the year 2014-15, the assessment shall be completed as expeditiously as possible and as and when scrutinies are over.

W.P.(C).No.9186/2015

In respect of service tax, it is submitted by the learned counsel for the petitioner that, they have made payments for ₹66,346/-, ₹24,41,565/- & ₹13,58,589/-. It is also submitted that, no further demand has been raised. Considering the said fact, future demand for service tax against the petitioner shall be deferred for a period of four months.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV