IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 9951 of 2015 (T)

PETITIONER :

JOYCE GEORGE
PROPRIETRESS, EMMANUEL TRADERS,
THODUPUZHA.

BY ADV. SRI.K.N.SREEKUMARAN

RESPONDENT(S) :

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1. **COMMERCIAL TAX OFFICER**
   I CIRCLE, THODUPUZHA- 685 584.

2. **INTELLIGENCE OFFICER (IB)**
   COMMERCIAL TAXES,
   IDUKKI AT THODUPUZHA- 685 584

3. **DEPUTY COMMISSIONER**
   COMMERCIAL TAXES,
   IDUKKI AT KATTAPANA – 685 508.

4. **INSPECTING ASSISTANT COMMISSIONER**
   COMMERCIAL TAXES, IDUKKI AT KATTAPANA- 685 508.

R1 TO R4 BY SR. GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 9951 of 2015 (T)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 -	**TRUE COPY OF THE PENALTY ORDER BEARING NO.CR1/14-15 DATED 30.10.2014 FOR 2011-12.**
EXT.P2 -	**TRUE COPY OF THE PENALTY ORDER NO.IBT/CR-2/14-15 DATED 29.12.2014 FOR 2012-13.**
EXT.P3 -	**TRUE COPY OF THE REVISION AGAINST EXT.P2 FOR 2012-13 FILED BEFORE THE 3RD RESPONDENT.**
EXT.P3(a) -	**TRUE COPY OF STAY APPLICATION FILED IN EXT.P3.**
EXT.P4 -	**TRUE COPY OF THE REVISION AGAINST EXT.P1 FOR 2011-12 FILED BEFORE THE 3RD RESPONDENT.**
EXT.P4(a) -	**TRUE COPY OF THE DELAY PETITION FILED IN EXT.P4.**
EXT.P4(b) -	**TRUE COPY OF THE STAY PETITION FILED IN EXT.P4.**
EXT.P5 -	**TRUE COPY OF THE RR NOTICE IN FORM NO.1 BEARING NOS.A7-752/14-15 AND A7-753/2014-15 DATED 27.2.2015 ISSUED BY THE 4TH RESPONDENT.**
EXT.P6 -	**TRUE COPY OF THE STAY ORDER NO.A3-KVAT.RP NO.04/2015 DATED 20.3.2015 FOR THE YEAR 2012-13 BY THE 3RD RESPONDENT.**
EXT.P7 -	**TRUE COPIES OF THE ASSESSMENT ORDERS FOR 2011-12 & 2012-13 ISSUED AGAINST M/S.FOOD, FATS AND FERTILIZERS LTD, ERNAKULAM BY THE ASSISTANT COMMISSIONER SPL. CIRCLE-I, ERNAKULAM.**
EXT.P8 -	**TRUE COPY OF THE LETTER DATED 27.1.2015 AND COPY OF THE CHEQUE ISSUED BY M/S. 3.F. INDUSTRIES LTD. TO THE ASSISTANT COMMISSIONER.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.9951 OF 2015

Dated this the 27th day of March, 2015

J U D G M E N T

Against Exts.P1 and P2 penalty orders passed against the petitioner under the Kerala Value Added Tax Act, the petitioner has preferred Exts.P4 and P3 revision applications respectively before the 3rd respondent. Along with the revision petitions, the petitioner preferred Exts.P4 (b) and P3 (a) stay petitions. As there was a delay in the filing of Ext.P4 revision, the petitioner also filed Ext.P4 (a) delay condonation petition before the 3rd respondent. The 3rd respondent proceeded to pass orders on Ext.P3 (a) stay application and in Ext.P6 order that was so passed directed the petitioner to remit 30% of the penalty amounts confirmed against him by Ext.P2 order as a condition for stay of recovery of the balance amounts. It is stated that no orders have been passed on Ext.P4 (b) stay application. In the writ petition, the petitioner impugns Ext.P6 order of conditional stay as also the recovery proceedings pending disposal of Ext.P4 (b) stay application by the 3rd respondent.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader 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.P6 order, the 3rd respondent has taken note of the fact that the primary issue regarding classification that was urged by the petitioner in the revision petition as already been decided against the petitioner by judgment of this Court. It is for this reason that the 2nd respondent found that the petitioner would be entitled only to a conditional order of stay and not in absolute stay against recovery of penalty amounts confirmed against him.

4. Counsel for the petitioner would point out that, even if the classification issues found against him, the fact remains that the proceedings for setting aside for amounts confirmed by way of penalty and inasmuch as the classification of the product was effected by the petitioner at the time when law was in a state of flux, the petitioner could not have been said to have possessed of the requisite mens rea for the imposition of penalty. It is his submission that this aspect was not considered by the 3rd respondent while passing Ext.P6 conditional order of stay.

5. On a perusal of Ext.P6 order, I find that the plea of the petitioner with regard to lack of requisite mens rea was not

considered by the 3rd respondent. Under the circumstances, I am inclined to modify the direction in Ext.P6 order and require the petitioner to effect payment of only 15% of the amount confirmed against him by Ext.P2 order as a condition for grant of stay of recovery of the balance amounts pending disposal of the revision petition filed by the petitioner. I am also of the view that the same condition can be imposed in Ext.P4 (b) stay application filed by the petitioner against Ext.P1 order of penalty.

Resultantly, the petitioner shall pay 15% of the amounts confirmed against him by Exts.P1 and P2 orders as a condition for the stay of recovery of the balance amounts confirmed by the said orders, pending consideration of Exts.P3 and P4 revision petitions by the 3rd respondent. If the petitioner pays the aforementioned amount of Rs.15% of the amounts confirmed against him by Exts.P1 and P2 orders, and furnishes adequate security to the satisfaction of the assessing authority for the balance amounts on or before 10.04.2015, then further proceedings for recovery of the balance amounts shall be kept in abeyance till such time as the 3rd respondent passes orders in the revision petition as directed, and communicates the same to the petitioner. The 3rd respondent shall pass final orders in the revision petition after hearing the petitioner within a period of two months from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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