

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 10204 of 2015 (A)

PETITIONER(S):

**K.VARKEY ABRAHAM,
KACHANATHU EBENEZER TRADE CENTRE,
ANGADI P.O., RANNI, REPRESENTED BY POWER OF
ATTORNEY THOMAS ABRAHAM, PULLAMPALLILPATHALIL HOUSE,
NELICKAMON P.O., ANGADI, RANNI, PATHANAMTHITTA.**

BY ADV. SRI.JINU JOSEPH

RESPONDENT(S):

- 1. DEPUTY COMMISSIONER OF TAXES (APPEALS),
COMMERCIAL TAXES COMPLEX, BABUJI NAGAR,
ASRAMAM, KOLLAM - 691 002.**
- 2. AGRICULTURAL INCOME TAX & COMMERCIAL TAX OFFICER,
OFFICE OF THE AGRI. INCOME TAX &
COMMERCIAL TAX OFFICER, RANNY,
PATHANAMTHITTA.**

BY GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 10204 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DTD.30.5.2014.

EXT.P2: TRUE COPY OF THE APPEAL MADE TO THE 1ST RESPONDENT.

EXT.P3: TRUE COPY OF THE PETITION FOR STAY.

EXT.P4: TRUE COPY OF THE JUDGMENT IN WP(C) 33203/2014 DTD.10.12.2014.

EXT.P5: TRUE COPY OF THE ORDER NO.KVATA (PTA) 316/2014 DTD.10.3.2015.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10204 OF 2015 (A)

Dated this the 30th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 conditional order of stay passed by the 1st respondent in a stay petition filed along with the appeal against Ext.P1 assessment order. The contention of the petitioner in the writ petition is that while passing Ext.P5 order, the 1st respondent did not exercise his discretion validly.

2. I have heard the learned counsel for the petitioner as also 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 while in Ext.P5 order, the 1st respondent has given reasons for arriving at the finding with regard to a prima facie case and thereafter, found that the petitioner was entitled only to a conditional stay of recovery of amounts confirmed against him, I note that the issue of limitation that was raised by the petitioner was not considered by the 1st respondent.

In that view of the matter, I feel that the petitioner should have been given an unconditional stay of recovery of the amounts confirmed against him by Ext.P1 assessment order, pending disposal of the appeal by the 1st respondent. Inasmuch as in Ext.P5 order, the 1st respondent has put the petitioner on terms, I quash Ext.P5 order and direct the 1st respondent to consider the appeal preferred by the petitioner against Ext.P1 order, on merits, without insisting on any payment as a condition for the grant of stay of recovery of the amounts confirmed against the petitioner by Ext.P1 order pending disposal of the appeal. Accordingly, the 1st respondent shall consider and pass orders on Ext.P2 appeal preferred by the petitioner within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. Recovery steps for recovery of amounts confirmed against the petitioner pursuant to Ext.P1 order shall be kept in abeyance till such time as the 1st respondent passes orders on the appeal and communicates the same to the petitioner.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp