IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 10370 of 2015 (U)

PETITIONER(S):

M/S.VELLIYARA TOURIST COMPLEX PVT. LTD. ,
REPRESENTED BY ITS MANAGING DIRECTOR,
SRI.PREM KUMAR.S., AMBALAPPUZHA, ALAPPUZHA.

BY ADV. SRI.T.K.ANANDA KRISHNAN

RESPONDENT(S):

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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY,
   COMMERCIAL TAXES DEPARTMENT,
   THIRUVANANTHAPURAM.

2. **DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES DEPARTMENT, KOLLAM.

3. **COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAXES DEPARTMENT, FIRST CIRCLE, ALAPPUZHA.

4. **THE COMMISSIONER OF EXCISE,**
   DEPARTMENT OF EXCISE, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No.10370 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - **TRUE COPY OF ASSESSMENT ORDER FOR THE YEAR 2013-14**

P2 - **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE R2**

P3 - **TRUE COPY OF THE CLEARANCE CERTIFICATE ISSUED BY THE R3 DATED 12/2/15**

P4 - **TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE R3 REQUESTING TO ISSUE FRESH CLEARANCE CERTIFICATE**

P5 - **TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE R3 DATED 23/3/15.**

P6 - **TRUE COPY OF THE SALES TAX PROPOSAL NOTICE ISSUED BY THE R3 DATED 26/3/15.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) No.10370 of 2015 (U)

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Dated this the 6th day of April, 2015

JUDGMENT

The petitioner, who is the managing director of a private limited company that is running a hotel, is aggrieved by the non-issuance of a clearance certificate by the 3rd respondent, that will enable him to get a renewal of his excise licence from the 4th respondent.

2. It is the case of the petitioner in the writ petition is that, when he had approached the 4th respondent for renewal of the excise licence that was issued to him, the 4th respondent took a stand that unless a clearance certificate is issued by the 3rd respondent in respect of clearance of the tax arrears under the Kerala Value Added Tax Act, 2003, [for short, the 'KVAT Act'], the renewal of the excise licence could not be undertaken by the 4th respondent. The 3rd respondent on the other hand has refused to issue any clearance certificate, by citing the existence of arrears to an extent of Rs.7,07,219/- from the petitioner towards tax, penalty and interest dues under the KVAT Act for the assessment year 2013 – 2014.

3. It is the submission of the petitioner that, against Ext.P1 assessment order that confirmed a tax, penalty and interest on the petitioner, he has preferred Ext.P2 appeal before the 2nd

respondent and the same is pending consideration before the 2nd respondent. It is his contention, therefore, that inasmuch as the demand for the assessment year 2013 – 2014 is pending in appeal, the insistence by the 4th respondent of a clearance certificate from the 3rd respondent in respect of the tax arrears for assessment year 2013 – 2014 may not be justified.

4. I have heard Sri.Ananda Krishnanan T.K., the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

5. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, although, the petitioner has preferred Ext.P2 appeal before the 2nd respondent against Ext.P1 order that confirmed a demand of tax, penalty and interest on the petitioner, he has not obtained any order of stay from the 2nd respondent in respect of the amounts that are due from him. Under the said circumstances, he cannot be said to be a person who has cleared the arrears of tax for the assessment year 2013 – 2014 under the KVAT Act for the purposes of obtaining a clearance certificate from the 3rd respondent. Taking note of the submission of the learned counsel for the petitioner that, he is prepared to pay 30% of the amounts due, pursuant to Ext.P1 order, as a condition for grant of stay of recovery of the

balance amounts pending consideration of Ext.P2 appeal by the 2nd respondent, I dispose the writ petition with the following directions :

i. On the petitioner paying 30% of the amount of Rs.7,07,219/- before the 3rd respondent, and furnishing a bond as stipulated in Rule 19 of the KVAT Rules before the 3rd respondent for the balance tax, penalty and interest amounts confirmed against the petitioner by Ext.P1 order, The 2nd respondent shall proceed to hear and dispose Ext.P2 appeal preferred by the petitioner before him, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

ii. On the petitioner remitting the 30% as directed above, before the 3rd respondent, the 3rd respondent shall issue a clearance certificate in respect of the arrears of KVAT for the period 2013 – 2014 to the petitioner, so as to enable the petitioner to produce the same before the 4th respondent for obtaining a renewal of his licence.

iii. Taking note of the submission of the learned Government Pleader that by Ext.P1 order, both a tax demand, as also a penalty have been confirmed on the petitioner and hence, against the demand of penalty the petitioner would have to file a separate revision petition, the 2nd respondent, while considering the appeal against Ext.P1 order as directed in this judgment, shall look into the aspect of whether the petitioner needs to file a separate revision petition against that part of Ext.P1 order, which confirms a penalty on the petitioner.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/07/04/