

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 10560 of 2015 (T)

PETITIONER(S):

**C.A. SUBAIR, PROPRIETOR,
M/S.SHAH IN SHAH ENTERPRISES,
PONJASSERY P.O., PERUMBAVOOR.**

**BY ADVS.SRI.P.S.SOMAN,
SMT.T.RADHAMANY.**

RESPONDENT(S):

- 1. THE INTELLIGENCE OFFICER (IB),
DEPARTMENT OF COMMERCIAL TAXES,
KUREECKAL BUILDING, EDAPPALLY P.O.,
ERNAKULAM.**
- 2. THE DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
COMMERCIAL TAX COMPLEX, MATTANCHERRY.**
- 3. ASSISTANT COMMISSIONER (ASSESSMENT),
COMMERCIAL TAXES, PERUMBAVOOR.**

BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE PENALTY NOTICE DATED 06/11/2013 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXT.P2 COPY OF THE REPLY DATED 21/11/2013 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P3 COPY OF THE COURIER RECEIPT DATED 25/11/2013.
- EXT.P4 COPY OF THE PENALTY ORDER DATED 12/03/2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXT.P5 COPY OF THE PROPOSAL FOR ASSESSMENT DATED 11/02/2015 ISSUED BY THE 3RD RESPONDENT.
- EXT.P6 COPY OF THE REVISION PETITION FILED BEFORE THE 2ND RESPONDENT DATED 25/02/2015.
- EXT.P7 COPY OF THE PETITION FOR CONDONATION OF DELAY FILED BEFORE THE 2ND RESPONDENT DATED 25/02/2015.
- EXT.P8 COPY OF THE PETITION FOR OUT OF TURN HEARING FILED BEFORE THE 2ND RESPONDENT DATED 25/02/2015.
- EXT.P9 COPY OF THE STAY PETITION FILED BEFORE THE 2ND RESPONDENT DATED 25/02/2015.
- EXT.P10 COPY OF THE STAY ORDER ISSUED BY THE 2ND RESPONDENT DATED 21/03/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 10560 of 2015 (T)

.....
Dated this the 31st day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P10 conditional order of stay that was passed by the 2nd respondent, in a revision petition filed by the petitioner, against Ext.P4 order of penalty. In the writ petition, challenge against Ext.P10 order is essentially that while passing the said order, the 2nd respondent did not exercise his discretion validly.

2. I have heard Sri.P.S.Soman Pulladan, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.
3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, the stay petition filed by the petitioner was in a revision petition where he challenged the imposition of penalty on him under Ext.P4 order. The penalty itself was imposed on him for allegedly submitting bogus 'C' Forms and availing concessional rate of tax with a view to evade tax legitimately due to the public exchequer. While considering the stay petition, filed by the petitioner along with the revision petition, the 2nd respondent in Ext.P10 order clearly finds that, on enquiry with the assessing

authority it was learnt that the petitioner had not produced any 'C' Form before him for claiming the concessional rate of tax. It is, thereafter, pointed out that, a detailed enquiry had to be made, after perusing the files that were available with the Commercial Taxes department. In the light of the said observations of the 2nd respondent, I am of the view that, the petitioner ought to have been granted an unconditional stay in the matter since, at least prima facie, there was reason to believe that, there was no justification for imposition of a penalty on the petitioner. Thus, I quash Ext.P10 order and direct the 2nd respondent to pass final orders in Ext.P6 revision petition preferred by the petitioner before him, on merits, after hearing the petitioner, within a period of two months from the date of receipt of a copy of this judgment.

Recovery steps for recovery of the amounts confirmed against the petitioner by Ext.P4 order shall be kept in abeyance, till such time as the 2nd respondent passes orders, as directed above, and communicates the same to the petitioner.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/01/04/