

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 10782 of 2015 (W)

PETITIONER(S) :

**M/S.ARCHIVES CONSTRUCTIONS PVT. LTD.
28/3377, FIRST FLOOR, MENONS COMPLEX,
ELAMKULAM, KADAVANTHRA, KOCHI - 682 020
REPRESENTED BY ITS MANAGING DIRECTOR SRI.T.PADMAJAN.**

**BY ADVS.SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR
SMT.KALA G.NAMBIAR
SRI.K.AMAL NATH NAIK
SRI.ARJUN RADHAKRISHNAN NAIR
SMT.ANUSREE SURESH
SMT.DEEPTI SUSAN GEORGE**

RESPONDENT(S) :

- 1. THE DEPUTY COMMISSIONER (APPEALS)-II,
COMMERCIAL TAXES, ERNAKULAM-682 015.**
- 2. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES DEPARTMENT, ERNAKULAM, KOCHI-682 030.**

BY SMT.SOBHA ANNAMMA EAPPEN, GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1- COPY OF ORDER NO.32072071904/2009-10 DATED 17-09-2014
ISSUED BY THE ASSISTANT COMMISSIONER (WC)
COMMERCIAL TAXES, ERNAKULAM.
- EXHIBIT P2- COPY OF ORDER NO.32072071904/2010-11 DATED 17-09-2014
ISSUED BY THE ASSISTANT COMMISSIONER (WC)
COMMERCIAL TAXES, ERNAKULAM.
- EXHIBIT P3- COPY OF ORDER NO.32072071904/2011-12 DATED 17-09-2014
ISSUED BY THE ASSISTANT COMMISSIONER (WC)
COMMERCIAL TAXES, ERNAKULAM.
- EXHIBIT P4- COPY OF ORDER NO.32072071904/2012-13 DATED 17-09-2014
ISSUED BY THE ASSISTANT COMMISSIONER (WC)
COMMERCIAL TAXES, ERNAKULAM.
- EXHIBIT P5- COPY OF ORDER NO.32072071904/2013-14 DATED 17-09-2014
ISSUED BY THE ASSISTANT COMMISSIONER (WC)
COMMERCIAL TAXES, ERNAKULAM.
- EXHIBIT P6- COPY OF DEMAND NOTICE UNDER SECTION 7 OF THE KERALA
REVENUE RECOVERY ACT DATED 12-11-2014 ISSUED BY THE
INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL
TAXES, ERNAKULAM FOR THE PERIOD 2009-10.
- EXHIBIT P7- COPY OF DEMAND NOTICE UNDER SECTION 7 OF THE KERALA
REVENUE RECOVERY ACT DATED 12-11-2014 ISSUED BY THE
INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL
TAXES, ERNAKULAM FOR THE PERIOD 2010-11.
- EXHIBIT P8- COPY OF DEMAND NOTICE UNDER SECTION 7 OF THE KERALA
REVENUE RECOVERY ACT DATED 12-11-2014 ISSUED BY THE
INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL
TAXES, ERNAKULAM FOR THE PERIOD 2011-12.
- EXHIBIT P9- COPY OF DEMAND NOTICE UNDER SECTION 7 OF THE KERALA
REVENUE RECOVERY ACT DATED 12-11-2014 ISSUED BY THE
INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL
TAXES, ERNAKULAM FOR THE PERIOD 2012-13.
- EXHIBIT P10- COPY OF DEMAND NOTICE UNDER SECTION 7 OF THE KERALA
REVENUE RECOVERY ACT DATED 12-11-2014 ISSUED BY THE
INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL
TAXES, ERNAKULAM FOR THE PERIOD 2013-14.
- EXHIBIT P11- COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE
THE DEPUTY COMMISSIONER (APPEALS) ON 1-12-2014
AGAINST ORDER NO.32072071904/2009-10.

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- EXHIBIT P12- COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER (APPEALS) ON 1-12-2014 AGAINST ORDER NO.32072071904/2010-11.
- EXHIBIT P13- COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER (APPEALS) ON 1-12-2014 AGAINST ORDER NO.32072071904/2011-12.
- EXHIBIT P14- COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER (APPEALS) ON 1-12-2014 AGAINST ORDER NO.32072071904/2012-13.
- EXHIBIT P15- COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER (APPEALS) ON 1-12-2014 AGAINST ORDER NO.32072071904/2013-14.
- EXHIBIT P16- COPIES OF INTERLOCUTORY APPLICATIONS FOR STAY AND EARLY HEARING FILED WITH APPEAL BEFORE THE DEPUTY COMMISSIONER (APPEALS) DATED 1-12-2014 AGAINST ORDER NO.32072071904/2009-10.
- EXHIBIT P17- COPIES OF INTERLOCUTORY APPLICATIONS FOR STAY AND EARLY HEARING FILED WITH APPEAL BEFORE THE DEPUTY COMMISSIONER (APPEALS) DATED 1-12-2014 AGAINST ORDER NO.32072071904/2010-11.
- EXHIBIT P18- COPIES OF INTERLOCUTORY APPLICATIONS FOR STAY AND EARLY HEARING FILED WITH APPEAL BEFORE THE DEPUTY COMMISSIONER (APPEALS) DATED 1-12-2014 AGAINST ORDER NO.32072071904/2011-12.
- EXHIBIT P19- COPIES OF INTERLOCUTORY APPLICATIONS FOR STAY AND EARLY HEARING FILED WITH APPEAL BEFORE THE DEPUTY COMMISSIONER (APPEALS) DATED 1-12-2014 AGAINST ORDER NO.32072071904/2012-13.
- EXHIBIT P20- COPIES OF INTERLOCUTORY APPLICATIONS FOR STAY AND EARLY HEARING FILED WITH APPEAL BEFORE THE DEPUTY COMMISSIONER (APPEALS) DATED 1-12-2014 AGAINST ORDER NO.32072071904/2013-14.
- EXHIBIT P21- COPY OF THE JUDGMENT IN WPC.3457/2015 DATED 04-02-2015.
- EXHIBIT P22- COPY OF ORDER NO.KVATA-3398/2014, KVATA-3399/2014, KVATA-3400/2014, KVATA-3401/2014 & KVATA-3402/2014 DATED 12-03-2015 PASSED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.10782 of 2015 (W)

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Dated this the 9th day of April, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P22 conditional order of stay that was passed by the 1st respondent in the stay applications that were preferred, along with the appeals against the assessments completed in relation to the petitioner for the assessment years 2009 – 2010 to 2013 - 2014.

2. The sole ground of challenge against Ext.P22 conditional order of stay passed by the 1st respondent in the writ petition is that, the said order was passed without hearing the petitioner. It is the contention of the petitioner, therefore, that apart from the said order being vitiated by a non-compliance with the rules of natural justice, it is also a case where the 1st respondent, while passing the said order, has not exercised his discretion validly.
3. I have heard Sri.Aswin Gopakumar, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.
4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find from Ext.P22 order that the said order has being passed without hearing the petitioner. No doubt the learned Government Pleader would refer to Paragraph No.4 of Ext.P22 order to contend that the petitioner was not afforded a

hearing only because he did not respond to the notice posting the case for hearing, which was served on the authorised representative of the petitioner on 04.03.2015. I find from the records that, while, as a matter of fact, the petitioner was not heard, the impugned order does not contain any reason as to why the petitioner was required to pay the amounts specified therein as a condition for the grant of stay. Thus, I find that Ext.P22 order cannot be sustained for more than one reason. This Court has held in **Archana Agencies vs. Commercial Tax Officer (2014 (2) KLT 715)** that an authority considering a stay petition is bound to give reasons even while granting conditional stay. Resultantly, I quash Ext.P22 order and direct the 1st respondent to consider and pass orders in the stay applications within a period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner.

I make it clear that, the proceedings for recovery of amounts confirmed against the petitioner by the assessment orders, shall be kept in abeyance, till such time as the 1st respondent passes orders, as directed above, and communicates the same to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/10/04/