

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 11245 of 2015 (E)

PETITIONER(S):

**LEENA FRANCIS, M & H CONTRACTOR,
INDIAN OIL CORPORATION LTD., N.H. 47,
NENMANIKARA, THRISSUR-680 302.**

**BY ADVS.SRI.E.K.MADHAVAN,
SRI.V.KRISHNA MENON,
SMT.J.SURYA.**

RESPONDENT(S):

- 1. THE ASSISTANT COMMISSIONER,
OFFICE OF THE ASSISTANT COMMISSIONER OF
CENTRAL EXCISE, CUSTOMS & SERVICE TAX,
THRISSUR DIVISION, SAKTHAN THAMPURAN NAGAR,
THRISSUR-680 001.**
- 2. THE COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS & SERVICE TAX (APPEALS),
CENTRAL REVENUE BUILDINGS,
I.S. PRESS ROAD, KOCHI-682 018.**

**R1 & R2 BY ADV. SRI.SAIBY JOSE KIDANGOOR, SC,
ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE ORDER-IN-ORIGINAL NO.24/2010 ST DATED 12/07/2010.
- EXT.P2 COPY OF THE MEMORANDUM OF APPEAL.
- EXT.P2A COPY OF THE PETITION FOR WAIVER AND STAY.
- EXT.P3 COPY OF THE ORDER-IN-ORIGINAL NO.187/2011 ST DATED 24/10/2011.
- EXT.P4 COPY OF THE MEMORANDUM OF APPEAL.
- EXT.P4A COPY OF THE PETITION FOR WAIVER AND STAY.
- EXT.P5 COPY OF THE ORDER-IN-ORIGINAL NO.105/2012 ST DATED 08/11/2012.
- EXT.P6 COPY OF THE MEMORANDUM OF APPEAL.
- EXT.P6A COPY OF THE PETITION FOR STAY.
- EXT.P7 COPY OF THE ORDER DATED 24/03/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.11245 of 2015

.....
Dated this the 7th day of March, 2015

J U D G M E N T

Against Exts.P1, P3 and P5 orders confirming a demand of service tax and penalty on the petitioner, the petitioner had preferred Exts.P2, P4 and P6 appeals and Exts.P2(a), P4(a) and P6 (a) stay petitions before the 2nd respondent. The petitioner apprehends that steps for recovery of the amounts confirmed against the petitioner by Exts.P1, P3 and P5 orders will be taken even before the 2nd respondent considers the stay petition.

2. I have heard the learned counsel for the petitioner and also the learned Standing counsel for Central Board of Excise and customs.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I dispose the writ petition with the following directions:

- i. The 2nd respondent shall consider and pass orders on Exts.P2(a), P4(a) and P6(a) stay petitions within a period of four months from the date of receipt of a copy of this judgment, after hearing the petitioner.

ii. Recovery steps for recovery of amounts confirmed against the petitioner by Exts.P1, P3 and P5 orders, including operation of Ext.P7 garnishee notice, shall be kept in abeyance till orders are passed by the 2nd respondent as directed above and communicated to the petitioner.

iii. The order to be passed by the 2nd respondent shall be a reasoned one advertent to the contentions of the petitioner regarding existence of a prima facie case for a stay of recovery pending disposal of the appeal.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

