

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 16117 of 2015 (L)

PETITIONER :

**TARA SANITARY WARES,
GOODWILL TOWERS, NEAR PLAMOODU BRIDGE, PATTOM,
THIRUVANANTHAPURAM -695 004,
REPRESENTED BY ITS MANAGING PARTNER
SRI. V.K.AVIRACHAN.**

**BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR**

RESPONDENT(S):

- 1. INTELLIGENCE OFFICER,
SQUAD NO.VIII, COMMERCIAL TAXES,
THIRUVANANTHAPURAM AT NEYYATTINKARA- 695 121**
- 2. THE ASSISTANT COMMISSIONER (ASSESSMENT),
COMMERCIAL TAXES, SPECIAL CIRCLE, TAX TOWERS,
KARAMANA, THIRUVANANTHAPURAM -695 002**
- 3. THE DEPUTY COMMISSIONER (INTELLIGENCE),
COMMERCIAL TAXES, TAX TOWERS, KARAMANA,
THIRUVANANTHAPURAM -695 002**

BY SPL.GOVERNMENT PLEADER(TAXES) SRI.GEORGE MECHERIL

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: COPY OF SIR NO. 208714 DATED 18.8.2014
- EXT.P1(A): COPY OF SIR NO.214465 DATED 18.8.2014
- EXT.P1(B): COPY OF SIR NO.229335 DATED 18.8.2014
- EXT.P1(C): COPY OF SIR NO.208934 DATED 18.8.2014
- EXT.P2: COPY OF NOTICE DATED 26.8.2014 ISSUED BY THE 1ST RESPONDENT
- EXT.P3: COPY OF LETTER DATED 11.9.2014
- EXT.P4: COPY OF NOTICE DATED 12.9.2014 ISSUED BY THE 1ST RESPONDENT
- EXT.P5: COPY OF ADJOURNMENT APPLICATION DATED 23.9.2014
- EXT.P6: COPY OF NOTICE DATED 4.10.2014 OF THE 1ST RESPONDENT
- EXT.P7: COPY OF LETTER DATED 23.10.2014 REQUESTING RETURN OF THE RECORDS
- EXT.P8: COPY OF THE LETTER DATED 28.10.2014 FILED BEFORE THE 1ST RESPONDENT
- EXT.P9: COPY OF NOTICE DATED 15.1.2015 ISSUED BY THE 1ST RESPONDENT UNDER S.67 FOR THE YEAR 2010-11
- EXT.P9(A): COPY OF NOTICE DATED 15.1.2015 ISSUED BY THE 1ST RESPONDENT UNDER S.67 FOR 2010-11
- EXT.P9(B): COPY OF NOTICE DATED 14.1.2015 ISSUED BY THE 1ST RESPONDENT UNDER S.67 FOR 2011-12
- EXT.P9(C): COPY OF NOTICE DATED 14.1.2015 ISSUED BY THE 1ST RESPONDENT UNDER S.67 FOR 2012-13
- EXT.P9(D): COPY OF NOTICE DATED 14.1.2015 ISSUED BY THE 1ST RESPONDENT UNDER S.67 FOR 2013-14
- EXT.P9(E): COPY OF NOTICE DATED 14.1.2015 ISSUED BY THE 1ST RESPONDENT UNDER S.67 FOR 2014-15
- EXT.P10: COPY OF LETTER DATED 12.2.2015 FILED BY THE PETITIONER FOR THE YEAR 2009-10
- EXT.P10(A): COPY OF LETTER DATED 12.2.2015 FILED BY THE PETITIONER FOR THE YEAR 2010-2011

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- EXT.P10(B): COPY OF LETTER DATED 12.2.2015 FILED BY THE PETITIONER FOR THE YEAR 2011-12
- EXT.P10(C): COPY OF LETTER DATED 12.2.2015 FILED BY THE PETITIONER FOR THE YEAR 2012-13
- EXT.P10(D): COPY OF LETTER DATED 12.2.2015 FILED BY THE PETITIONER FOR THE YEAR 2013-14
- EXT.P10(E): COPY OF LETTER DATED 12.2.2015 FILED BY THE PETITIONER FOR THE YEAR 2014-15
- EXT.P11: COPY OF LETTER DATED 14.2.2015 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT
- EXT.P12: COPY OF NOTICE DATED 23.2.2015 ISSUED BY THE 1ST RESPONDENT
- EXT.P13: COPY OF LETTER DATED 26.2.2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- EXT.P14: COPY OF THE ORDER DATED 19.3.2015 ISSUED BY THE 3RD RESPONDENT
- EXT.P15: COPY OF THE NOTICE DATED 20.3.2015 ISSUED BY THE 1ST RESPONDENT
- EXT.P16: COPY OF THE LETTER DATED 28.3.2015 FILED BY THE PETITIONER
- EXT.P17: COPY OF THE ORDER DATED 4.4.2015 ISSUED BY THE 1ST RESPONDENT
- EXT.P17(A): COPY OF THE ORDER DATED 4.4.2015 ISSUED BY THE 1ST RESPONDENT
- EXT.P17(B): COPY OF THE ORDER DATED 4.4.2015 ISSUED BY THE 1ST RESPONDENT
- EXT.P17(C): COPY OF THE ORDER DATED 4.4.2015 ISSUED BY THE 1ST RESPONDENT
- EXT.P17(D): COPY OF THE ORDER DATED 4.4.2015 ISSUED BY THE 1ST RESPONDENT
- EXT.P17(E): COPY OF THE ORDER DATED 4.4.2015 ISSUED BY THE 1ST RESPONDENT

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

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P.A.TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.16117 of 2015

Dated this the 16th day of June, 2015

JUDGMENT

The petitioner impugns Ext.P17 series of penalty orders before this Court alleging violation of principles of natural justice.

2. The petitioner was served with proposal on penalty with notices dated 14.1.2015 and 15.1.2015. The petitioner was also served with notices to appear on 4.2.2015 as per notice dated 20.4.2015. It appears that the petitioner was served with photocopies of seized document on 20.3.2015. In the meanwhile, the petitioner filed an application before the third respondent-Deputy Commissioner by Ext.P3 to transfer the file from the second respondent to some other offices. This application was rejected on 19.3.2015. Ext.P14 is the order. Thereafter, by Ext.P15 dated 20.3.2015, the petitioner was directed to appear on 30.3.2015. The petitioner gave Ext.P16 reply seeking 90 days time to cross check the recovered documents and the CPU data with reference to the books of accounts and to file an appropriate reply to the penalty notice.

3. It appears that the second respondent did not act upon Ext.P16 and finalised the proceedings by Ext.P17 series in the absence of any other details being furnished by the petitioner and also providing with any other materials with any authority to conclude otherwise. The petitioner has been now saddled with the liability of the penalty to the tune of Rs.4,03,56,680/-.

4. The petitioner submits that in view of the fact that huge volume of documents are involved, he need a time to verify and cross-check the records. It is in fact, he sought 90 days for the reason that it will involves lot of labour to verify each of the books of entry. The petitioner submits that without intimating any outcome on Ext.P16, the second respondent concluded the proceedings in haste.

5. However, the learned Special Government Pleader defending action of the Authority and submits that the petitioner has an alternative remedy to challenge Ext.P9 in appropriate level and he should not have rushed to the High Court invoking under Article 226 of the Constitution. It is further submitted that the petitioner was given sufficient time in the process to defend the proposed notice.

6. As seen from the impugned order itself, the Authority has to verify several records to arrive at a conclusion. The petitioner has sought time as per Ext.P16 to enable them to produce documents and cross check the records relied by the Authorities. No doubt, the dealer cannot drag the proceedings at his own whims and fancies to delay the conclusion of the proceedings. However, a reasonable time ought to have been given to the petitioner by the Authority before concluding the proceedings. Perhaps, for the reason that the petitioner has sought 90 days time in Ext.P16, the Authority has refused to act upon such request. But, that does not mean that the petitioner should not be given a reasonable time to raise objection in support of this contention. But, the petitioner has been given time from 23.2.2015 onwards to defend his case. Though, there are laches on the part, that laches should not result in denial of substantial opportunity to defend his case. In that view of the matter, the laches can be remedied by imposing cost and substantial justice can be meted out to the petitioner by setting aside the impugned orders. Accordingly, following directions are issued:

1. The impugned orders are set aside.

2. The petitioner shall remit cost of Rs,50,000/- out of which Rs.25,000/- shall be paid in the Government Account No.0040-00-1119109 and the remaining amount shall be paid to the Kerala Mediation Centre attached to the High Court.
3. The costs shall be paid by the petitioner within three weeks.
4. The petitioner shall produce receipt for payment of the costs before the second respondent along with this judgment on 15.7.2015.
5. Thereafter, the second respondent shall conclude the entire proceedings within two months.
6. It is made clear that the petitioner shall produce the entire books of accounts before the second respondent within four weeks from the date of appearance.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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