

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 22048 of 2015 (E)

PETITIONER:

SUBHADRA,
W/O.SANKARAN, MANULLIL PUTHENPURAYIL HOUSE,
THIRUVANIYUR VILLAGE, KUNNATHUNAD TLAUK, ERNAKULAM.

BY ADV. SRI.M.C.JOHN

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY (TAXES) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
2. THE DEPUTY COMMISSIONER OF EXCISE
PALAKKAD PIN 678 001.
3. THE VILLAGE OFFICER,
THIRUVANIYUR VILLAGE, KUNNATHUNAD TLAUK, ERNAKULAM,
PIN 683 542.

R BY SRI. K.C. VINCENT, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S' EXHIBITS :

P1- TRUE COPY OF THE LETTER NO.XA1- 10239/96 DATED 7.6.1996 ISSUED BY THE COMMISSIONER OF EXCISE.

P2- TRUE COPY OF THE DEMAND NOTICE NO.P5-7000/96 DATED 16.2.1998 ISSUED BY THE 2ND RESPONDENT ALONG WITH ENGLISH TRANSLATION.

P2(a)- TRUE COPY OF THE RR NOTICE NO.D1-15654/98 DATED 27.11.1998 ISSUED BY THE 3RD RESPONDENT ALONG WITH ENGLISH TRANSLATION.

P3- TRUE COPY OF THE RECEIPT DATED 15.2.1999 ISSUED BY THE 3RD RESPONDENT ALONG WITH ENGLISH TRANSLATION.

P4- TRUE COPY OF THE PROCEEDINGS NO.P7-2587/98 DATED 13.9.1999 ISSUED BY THE 2ND RESPONDENT.

P5- TRUE COPY OF THE ORDER DATED 12.10.1999 IN CMP NO.42718/99 IN OP 25363/99 OF THIS HONOURABLE COURT.

P5(a)- TRUE COPY OF THE RECEIPT DATED 11.11.1999 ALONG WITH ENGLISH TRANSLATION.

P6- TRUE COPY OF THE JUDGMENT IN OP NO.25363/99 DATED 2.12.2005.

P6(a)- TRUE COPY OF THE RECEIPT DATED 30.1.2006 ALONG WITH ENGLISH TRANSLATION.

P6(b)- TRUE COPY OF THE RECEIPT DATED 29.3.2006 ALONG WITH ENGLISH TRANSLATION.

P6(c)- TRUE COPY OF THE RECEIPT DATED 27.9.2006 ALONG WITH ENGLISH TRANSLATION.

P6(d)- TRUE COPY OF THE RECEIPT DATED 28.11.2006 ALONG WITH ENGLISH TRANSLATION.

P6(e)- TRUE COPY OF THE RECEIPT DATED 23.1.2007 ALONG WITH ENGLISH TRANSLATION.

P7- TRUE COPY OF THE NOTICE NO.P7-2587/98 DATED 9.7.2015 ISSUED BY THE 2ND RESPONDENT ALONG WITH ENGLISH TRANSLATION.

P8- TRUE COPY OF THE G.O(MS) NO.64/2015 DATED 21.4.2015 ISSUED BY THE 1ST RESPONDENT ALONG WITH ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 22048 of 2015 (E)

Dated this the 13th day of August, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record.

2. The petitioner, who was a toddy shop licensee during 1996–1997, transported toddy inter district by paying an additional tax of Re.1 per bulk litre of toddy. In course of time, the Department issued a clarification, according to which Re.1 per litre per day had to be collected. Accordingly, an additional tax of ₹2,88,000/- was demanded from the petitioner. Later, on the petitioner's failure to remit the said amount, the Department took recourse to the provisions of the Revenue Recovery Act.

3. Aggrieved, the petitioner filed O.P. No. 25363 of 1999, which was disposed of by this Court through Ext.P6 judgment permitting the petitioner to pay the balance amount in five equal monthly instalments. It is said to have been complied with.

4. Later, it transpired that the amount paid by the petitioner through instalments was adjusted towards interest and a further

demand of ₹ 9,84,404/- was made by the Department against the petitioner. Eventually, in terms of the amnesty scheme introduced by the Government, the petitioner was asked to pay ₹ 3,25,513/- as on 30.06.2015. Once again, assailing the recovery proceedings initiated by the Department, the petitioner has approached this Court.

5. Though the learned counsel for the petitioner has elaborately submitted on merits, eventually he has submitted that the petitioner is willing to pay the outstanding amount under the amnesty scheme, as has been reflected in Ext.P7, provided the facility of instalments is given.

6. The learned counsel for the petitioner has also submitted that the very scheme provides for the facility of instalments, and that the Department has already agreed for providing four instalments. The singular grievance of the petitioner, as has been submitted by the learned counsel, is that given her impecunious circumstances, the petitioner is not in a position to pay the entire outstanding amount in four instalments, and that the Department shall provide some more instalments.

7. The learned Government Pleader, on his part, has submitted

that the Department has already considerate enough to provide four instalments to the petitioner. He has further submitted that since it is an amnesty scheme, where the petitioner has already got the benefit, it is not permissible for her to insist on further concessions from the Department.

8. Be that as it may, if the petitioner wants to take advantage of the amnesty scheme, it is incumbent that she has to comply with the terms thereof. At any rate, if there is any provision for exercising discretion on the part of the Department, it is also open for them to consider the case of the petitioner sympathetically. This Court, however, makes it clear that the observations made herein does not amount to any expression of opinion on the part of this Court on merits.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Government Pleader, this Court disposes of the writ petition with a direction to the respondent Department to consider the petitioner's request for providing more than four instalments to enable her to pay the arrears as demanded in Ext.P7 under the amnesty scheme. Since

the petitioner has already submitted a representation on 25.06.2015, the authorities may consider it, as expeditiously as possible, at any rate before the amnesty scheme comes to an end. If necessary, the petitioner may once again approach the authorities with another representation spelling out the details and seeking the authorities' indulgence for providing more instalments than what has already been agreed to. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

