

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 26333 of 2015 (N)

PETITIONER(S) :

- 1. JOSEPH TITO,
NERIAMPARAMBIL HOUSE, THURUTHY,
CHANGANACHERRY- 686 535.**
 - 2. P.O.SABU,
PUTHENPURA, THALAYAZHOM P.O-686 607, VAIKOM**
- BY ADV. SRI.V.V.GEORGEKUTTY**

RESPONDENT(S):

- 1. INTELLIGENCE OFFICER,
SQUAD-1, COMMERCIAL TAXES, MATTANCHERRY- 683 101.**
- 2. COMMERCIAL TAX OFFICER- 11,
1ST CIRCLE, KALAMASSERY- 682 024.**
- 3. DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERRY- 682 002.**
- 4. DEPUTY TAHSILDAR,
REVENUE RECOVERY, CHANGANACHERRY- 686 101.**
- 5. DEPUTY TAHSILDAR,
REVENUE RECOVERY, VAIKOM- 686 008.**

BY GOVERNMENT PLEADER SRI.LIJU.V.STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE COPY OF THE SHOP INSPECTION REPORT DATED 09.12.2006 OF THE 1ST RESPONDENT.**
- P2: TRUE COPY OF THE PENALTY ORDER FOR 2005-06 DATED 16.01.2012 ISSUED BY THE 1ST RESPONDENT.**
- P2(A): TRUE COPY OF THE PENALTY ORDER FOR 2006-07 DATED 16.01.2012 ISSUED BY THE 1ST RESPONDENT.**
- P3: TRUE COPY OF THE REVISION PETITION FOR 2005-06 FILED BEFORE THE 3RD RESPONDENT.**
- P3(A): TRUE COPY OF THE REVISION PETITION FOR 2006-07 FILED BEFORE THE 3RD RESPONDENT.**
- P4: TRUE COPY OF THE STAY PETITION FOR 2005-06 FILED BEFORE THE 3RD RESPONDENT.**
- P4(A): TRUE COPY OF THE STAY PETITION FOR 2006-07 FILED BEFORE THE 3RD RESPONDENT.**
- P5: TRUE COPY OF THE STAY ORDER FOR 2005-06 DATED 13.07.2015 ISSUED BY THE 3RD RESPONDENT.**
- P5(A): TRUE COPY OF THE STAY ORDER FOR 2006-07 DATED 13.07.2015 ISSUED BY THE 3RD RESPONDENT.**
- P6: TRUE COPY OF THE REVENUE RECOVERY NOTICES IN FORM 1 & 10+ AS PER COLLECT ORATE REFERENCE 2015/28692/5.**
- P7: TRUE COPY OF THE JUDGMENT REPORTED IN 19 KTR 278.**
- P8: TRUE COPY OF THE EXTENSION PETITION DATED 18.08.2015 FILED BEFORE THE 3RD RESPONDENT.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

PA.TO JUDGE.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 26333 of 2015

Dated this the 1st day of September, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P5 and P5(a) conditional orders of stay passed by the 3rd respondent in revision petitions that were filed by the petitioner against orders of penalty imposed for the assessment years 2005-2006 and 2006-2007 respectively. It is the contention of the petitioner in the writ petition that while passing the conditional order of stay, the 3rd respondent has not exercised his discretion validly.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I note that in Exts.P5 and P5(a) orders, the 3rd respondent principally relies on the fact that the petitioner had not produced any accounts or material to substantiate his contention that the order of penalty passed by the 1st respondent suffered from material irregularities. It is under these circumstances that the 3rd respondent found that the petitioner had only established a case for a conditional stay and

required the petitioner to remit 30% of the amount demanded by the 1st respondent in the order imposing penalty and to furnish adequate security for the remaining amount to the satisfaction of the original authority on or before 20.08.2015. I find that the orders impugned in the writ petition do not suffer from any illegality, inasmuch as the 3rd respondent has exercised his discretion based on the material that was available before him. Resultantly, I do not find any reason to interfere with the said orders. The writ petition in its challenge against Exts.P5 and P5(a) orders of the 3rd respondent, therefore fails and is accordingly dismissed.

The learned counsel for the petitioner prays for some time to effect payment of the amounts directed to be paid in Exts.P5 and P5(a) order. Taking into account the plea of financial hardship projected by counsel for the petitioner, I permit the petitioner to comply with the directions in Exts.P5 and P5(a) orders on or before 15.09.2015. Save for this limited modification with regard to the time for compliance with the directions in Exts.P5 and P5(a) orders, the writ petition is otherwise dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE