

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).No. 26623 of 2015 (C)

PETITIONER:

**HOTEL VOYAGE, REPRESENTED
BY THEIR MANAGER MR.NINAN JOHN,
SKY HOTEL CUM SHOPPING ARCADE
CLUB 7)DOOR NO.19/10 AND 19/11,
M.C.ROAD, THIRUVALLA - 689 101.**

**BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER,
THIRUVALLA - 689 101.**
- 2. THE ASSISTANT COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOLLAM - 691 001.**
- 3. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
TALUK OFFICE, THIRUVALLA - 689 101.**

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: TRUE COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 18/6/2007.**
- P2: TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 16/12/2012.**
- P3: TRUE COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE 1ST RESPONDENT TO SKY HOTEL CUM SHOPPING ARCADE DATED 10/5/2013.**
- P4: TRUE COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE 1ST RESPONDENT TO MRS.SANGEETHA JACOB JOHN DATED 10/5/2013.**
- P5: TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 25/10/2014.**
- P6: TRUE COPY OF THE ASSESSMENT ORDER FOR 2007-2008 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 22/11/2014.**
- P6(A): TRUE COPY OF THE ASSESSMENT ORDER FOR 2008-2009 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 22/11/2014.**
- P6(B): TRUE COPY OF THE ASSESSMENT ORDER FOR 2009-2010 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 22/11/2014.**
- P6(C): TRUE COPY OF THE ASSESSMENT ORDER FOR 2010-2011 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 22/11/2014.**
- P6(D): TRUE COPY OF THE ASSESSMENT ORDER FOR 2011-2012 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED 22/11/2014.**
- P7: TRUE COPY OF THE APPEAL FOR 2007-2008 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.**
- P7(A): TRUE COPY OF THE APPEAL FOR 2008-2009 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.**
- P7(B): TRUE COPY OF THE APPEAL FOR 2009-2010 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.**
- P7(C): TRUE COPY OF THE APPEAL FOR 2010-2011 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.**
- P7(D): TRUE COPY OF THE APPEAL FOR 2011-2012 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.**
- P8: TRUE COPY OF PETITION FOR STAY RELATING TO 2007-2008 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.**

- P8(A): TRUE COPY OF PETITION FOR STAY RELATING TO 2008-2009 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.
- P8(B): TRUE COPY OF PETITION FOR STAY RELATING TO 2009-2010 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.
- P8(C): TRUE COPY OF PETITION FOR STAY RELATING TO 2010-2011 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.
- P8(D): TRUE COPY OF PETITION FOR STAY RELATING TO 2011-2012 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 23/12/2014.
- P9: TRUE COPY OF THE APPLICATION FOR EARLY HEARING FOR THE 2007-2008 SUBMITTED BY THE PETITIONER TO THE RESPONDENT DATED 23/12/2014.
- P9(A): TRUE COPY OF THE APPLICATION FOR EARLY HEARING FOR THE 2008-2009 SUBMITTED BY THE PETITIONER TO THE RESPONDENT DATED 23/12/2014.
- P9(B): TRUE COPY OF THE APPLICATION FOR EARLY HEARING FOR THE 2009-2010 SUBMITTED BY THE PETITIONER TO THE RESPONDENT DATED 23/12/2014.
- P9(C): TRUE COPY OF THE APPLICATION FOR EARLY HEARING FOR THE 2010-2011 SUBMITTED BY THE PETITIONER TO THE RESPONDENT DATED 23/12/2014.
- P9(D): TRUE COPY OF THE APPLICATION FOR EARLY HEARING FOR THE 2011-2012 SUBMITTED BY THE PETITIONER TO THE RESPONDENT DATED 23/12/2014.
- P10: TRUE COPY OF NOTICE IN FORM NO.1 NO.2015/211/3/500 ISSUED BY THE 3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.
- P10(A): TRUE COPY OF NOTICE IN FORM NO.1 NO.2015/207/3/500 ISSUED BY THE 3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.
- P10(B): TRUE COPY OF NOTICE IN FORM NO.1 NO.2015/208/3/500 ISSUED BY THE 3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.
- P10(C): TRUE COPY OF NOTICE IN FORM NO.1 NO.2015/209/3/500 ISSUED BY THE 3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.
- P10(D): TRUE COPY OF NOTICE IN FORM NO.1 NO.2015/210/3/500 ISSUED BY THE 3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.
- P11: TRUE COPY OF NOTICE IN FORM NO.10 NO.2015/211/3/500 ISSUED BY THE 3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.
- P11(A): TRUE COPY OF NOTICE IN FORM NO.10 NO.2015/207/3/500 ISSUED BY THE 3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.
- P11(B): TRUE COPY OF NOTICE IN FORM NO.10 NO.2015/208/3/500 ISSUED BY THE 3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.

P11(C): TRUE COPY OF NOTICE IN FORM NO.10 NO.2015/209/3/500 ISSUED BY THE
3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.

P11(D): TRUE COPY OF NOTICE IN FORM NO.10 NO.2015/210/3/500 ISSUED BY THE
3RD RESPONDNET TO THE PETITIONER DATED 16/3/2015.

P12: TRUE COPY OF JUDGMENT IN WPC.NO.10470/2015 DATED 31/3/2015.

P13: TRUE COPY OF NOTICE K V A TA (PTA)333/14 TO 338/14 ISSUED BY THE
2ND RESPONDENT TO THE PETITONER DATED 20.4.2015.

P14: TRUE COPY OF ORRDER NO. K V A TA (PTA)333/14 TO 338/14 ISSUED BY THE
2ND RESPONDENT TO THE PETITONER DATED 20.4.2015.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 26623 of 2015

Dated this the 11th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P14 conditional order of stay passed by the 2nd respondent in appeals preferred by the petitioner against the assessment orders passed under the Kerala Value Added Tax Act, 2003, hereinafter referred to as 'KVAT Act', for the assessment years 2007-2008 to 2012-2013. By Ext.P14 order, the 2nd respondent has directed the petitioner to remit 30% of the tax and interest amounts demanded for the various assessment years in the assessment orders as a condition for the grant of stay of recovery of the balance amounts pending disposal of the appeal. In the writ petition, Ext.P14 is impugned, inter alia, on the ground that the 2nd respondent while passing Ext.P14 order, did not exercise his discretion validly.

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

I note that, it is the specific case of the petitioner in the writ petition that the 2nd respondent has already heard the appeal itself and Ext.P14 order was passed solely because of the direction in

Ext.P12 judgment to the 2nd respondent to consider and pass orders in the stay petitions. Taking note of the said fact, I dispose the writ petition with a direction to the 2nd respondent to pass final orders in the appeals in respect of the assessment years 2007-2008 to 2012-2013, within a period of two months from the date of receipt of a copy of this judgment, without insisting on any pre-deposit of tax and interest pursuant to the assessment orders. To enable the 2nd respondent to do so, I quash Ext.P14 order and declare that coercive steps for recovery of amounts confirmed against the petitioner by the assessment orders for the aforementioned assessment years, shall be kept in abeyance, till such time as orders are passed as directed and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE