

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 28059 of 2015 (F)

PETITIONER(S):

SMT. VALSA JUSTIN
PROPRIETRESS, M/S.ASHLY BONDS, MUDICODE
NEAR AGRICULTURAL UNIVERSITY CAMPUS, PATTIKKAD.P.O.
THRISSUR-680 652.

BY ADVS.SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM. PIN-695 001.

2. KERALA VALUE ADDED TAX APPELLATE TRIBUNAL
ERNAKULAM. PIN-682 015.

3. DEPUTY COMMISSIONER (APPEALS)
ERNAKULAM. PIN-682 015.

4. THE COMMERCIAL TAX OFFICER
FIRST CIRCLE, THRISSUR, PIN-680 001.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28059 of 2015 (F)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1- TRUE COPY OF THE PROCEEDINGS ISSUED BY THE 4TH RESPONDENT DATED
24.9.2009.

P2- TRUE COPY OF THE APPELLATE ORDER DATED 03.08.2010.

P3- TRUE COPY OF THE COMMON ORDER DATED 13.3.2014.

P4- TRUE COPY OF THE REVIEW PETITION DATED 29.4.2014 FILED AGAINST THE
ORDER DATED 13.3.2014 IN TA(VAT)NO.8/2011.

P4(A)- TRUE COPY OF THE REVIEW PETITION DATED 29.4.2014 FILED AGAINST
THE ORDER DATED 13.3.2014 IN TA(VAT)NO.9/2011.

P4(B)- TRUE COPY OF THE REVIEW PETITION DATED 29.4.2014 FILED AGAINST
THE ORDER DATED 13.3.2014 IN TA(VAT)NO.10/2011.

P5- TRUE COPY OF THE NOTICE ISSUED FROM THE OFFICE OF THE 2ND
RESPONDENT IN FORM-G DATED 28.5.2014 DIRECTING THE PETITIONER TO APPEAR
ON 23.7.2014.

P6- TRUE COPY OF THE RESTORATION PETITION DATED 16.9.2014 FILED IN TA.
(VAT)NO.8/2011.

P6(A)- TRUE COPY OF THE RESTORATION PETITION DATED 16.9.2014 FILED IN
TA. (VAT)NO.9/2011.

P6(B)- TRUE COPY OF THE RESTORATION PETITION DATED 29.4.2014 FILED IN
TA. (VAT)NO.10/2011.

P7- TRUE COPY OF THE ORDER DATED 26.2.2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.28059 of 2015

.....
Dated this the 16th day of September, 2015

J U D G M E N T

Challenge in the writ petition is against Ext.P7 order passed by the 2nd respondent Tribunal in a restoration petition that was filed on behalf of the petitioner for restoring an appeal that was dismissed for default by the said Tribunal. I note from the averments in the writ petition that, pursuant to the dismissal of the appeals by the Tribunal, the petitioner had filed restoration applications before the 2nd respondent Tribunal, supported with an affidavit by counsel who was engaged to appear for the petitioner. In the affidavits filed by counsel for the petitioner, it was stated that counsel could not reach the Tribunal in time, on the date fixed for hearing, since counsel was held up in traffic and it was under those circumstances that there was no representation for the petitioner at the time when the case was taken up before the Tribunal. In Ext.P7 order, the 2nd respondent Tribunal, on the basis of the objections raised by the State representative, found that the petitioner had not appeared on previous occasions also, and therefore, it was not possible to consider the prayer of the petitioner for restoration of the appeal.

2. Heard the learned counsel for the petitioner and the learned

Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case, as also the submissions made across the bar, and taking note of the averments in the affidavit filed in support of the restoration application before the 2nd respondent Tribunal, I am of the view that, the 2nd respondent Tribunal ought to have taken into account the fact that, there was an affidavit filed by counsel, engaged by the petitioner to represent him in the appeal before the Tribunal, which clearly indicated the circumstances under which counsel could not appear before the Tribunal on the date fixed for hearing. I am of the view that, when an affidavit is filed by responsible counsel engaged by the petitioner, then the 2nd respondent Tribunal ordinarily ought to have accepted the averments in the affidavit and should not have rejected it unless there were compelling reasons that justified such a course of action. Going through the averments in the affidavit filed by counsel for the petitioner before the Tribunal, I am of the view that, this is a case where the Tribunal ought to have exercised its discretion to restore the appeals which were dismissed for default and considered the matter on merits. Accordingly, I quash Ext.P7 order and restore TA(VAT).Nos.8, 9, and 10/2011 on the files of the 2nd respondent Tribunal and direct the Tribunal to consider the appeals on merits

after hearing the petitioner on a suitable date, due notice of which shall be given to the petitioner.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns