

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 29349 of 2015 (P)

PETITIONER(S):

**M/S. KERALEEYAM AYURVEDIC RESORTS,
THATHAMPALLY, ALAPPUZHA,
REPRESENTED BY MANAGING DIRECTOR.**

**BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.ROSIE ATHULYA JOSEPH
SMT.O.A.NURIYA
KUM.SOUMYA PRAKASH
KUM.MEKHALA M.BENNY**

RESPONDENT(S):

- 1. THE INTELLIGENCE OFFICER,
SQUAD NO.III, COMMERCIAL TAXES,
ALAPPUZHA-688001.**
- 2. THE DEPUTY COMMISSIONER (APPEALS),
KOLLAM-691001.**

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE PENALTY ORDER FOR THE AY2013-14**
- P2: COPY OF THE PENALTY ORDER FOR THE AY2014-15**
- P3: COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE R2 FOR THE YEAR 2013-14**
- P4: COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE R2 FOR THE YEAR 2014-15**
- P5: COPY OF THE STAY PETITION FILED BEFORE THE R2 FOR THE YEAR 2013-14**
- P6: COPY OF THE STAY PETITION FILED BEFORE THE R2 FOR THE YEAR 2014-15**
- P7: COPY OF THE JUDGMENT IN WPC.20037/15**
- P8: COPY OF THE STAY ORDER BY R2 DATED 22/8/15.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 29349 of 2015

Dated this the 29th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P8 conditional order of stay passed by the 2nd respondent in an appeal filed against an order of penalty imposed on the petitioner under the Kerala Tax on Luxuries Act. The challenge in the writ petition against Ext.P8 is essentially that the 2nd respondent, while passing Ext.P8 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 official respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in Ext.P8 order, the 2nd respondent has considered the contention of the petitioner that they are running an Ayurvedic hospital and not a Resort and therefore, they were not liable to pay any luxury tax. The 2nd respondent found that in the correspondence between the petitioner and the Municipal authorities, it was the stand of the petitioner that the premises was basically a Resort and not a hospital. It is for this reason that the 2nd respondent found that the

petitioner was entitled only to a conditional order of stay. On a perusal of the reasoning of the 2nd respondent in Ext.P8 order, I do not see any reason to interfere with the said order in these proceedings under Article 226 of the Constitution of India. Accordingly, the writ petition, in its challenge against Ext.P8 order fails, and is accordingly, dismissed.

The learned counsel for the petitioner would pray for some more time to comply with the directions in Ext.P8 order. Taking into account the plea of financial hardship urged on behalf of the petitioner, I grant the petitioner time up to 20.10.2015, for complying with the directions in Ext.P8 order of the 2nd respondent. Save for this limited modification with regard to the time for complying with the directions in Ext.P8 order, the writ petition is otherwise, dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE