

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA**

**THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937**

**WP(C).No. 29942 of 2015 (P)**  
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**PETITIONER(S):**  
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**M/S.ROYAL PARK HOTEL & RESORTS(P) LTD  
MATHILIL POST  
KOLLAM-691601. REPRESENTED BY ITS FINANCE MANAGER  
MR. RATISH VARMA.G.**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.P.GOPINATH  
SRI.P.BENNY THOMAS  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURIAN THOMAS  
SRI.RAJA KANNAN**

**RESPONDENT(S):**  
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- 1. STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT  
TAXES DEPARTMENT, SECRETARIAT  
THIRUVANANTHAPURAM-695001.**
- 2. DEPUTY COMMISSIONER,  
COMMERCIAL TAXES, COMMERCIAL TAXES COMPLEX, ASHRAMAM  
KOLLAM-691002.**
- 3. THE INTELLIGENCE OFFICER (INVESTIGATION BRANCH)-II,  
COMMERCIAL TAXES, COMMERCIAL TAXES COMPLEX, ASHRAMAM  
KOLLAM-691002.**

**BY ADV.S.SUDHEESH KUMAR, SENIOR GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-10-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. COPY OF THE PENALTY ORDER NO. CR-116/10-11(2007-2008) DATED 04-04-2015 ISSUED BY THE 3RD RESPONDENT FOR THE YEAR 2007-2008.

EXT.P2. COPY OF THE PENALTY ORDER NO. CR-4/15-16(2008-09) DATED 04-04-2015 ISSUED BY THE 3RD RESPONDENT FOR THE YEAR 2008-09.

EXT.P3. COPY OF THE PENALTY ORDER NO. CR-5/15-16(2009-10) DATED 04-04-2015 ISSUED BY THE 3RD RESPONDENT FOR THE YEAR 2009-10.

EXT.P4. COPY OF THE PENALTY ORDER NO. CR-6/15-16(2010-11) DATED 04-04-2015 ISSUED BY THE 3RD RESPONDENT FOR THE YEAR 2010-11.

EXT.P5. COPY OF THE PENALTY ORDER NO. CR-7/15-16(2011-12) DATED 04-04-2015 ISSUED BY THE 3RD RESPONDENT FOR THE YEAR 2011-12.

EXT.P6. COPY OF THE REVISION APPLICATION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P1 ORDER.

EXT.P7.COPY OF THE REVISION APPLICATION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P2 ORDER.

EXT.P8.COPY OF THE REVISION APPLICATION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P3 ORDER.

EXT.P9.COPY OF THE REVISION APPLICATION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P4 ORDER.

EXT.P10.COPY OF THE REVISION APPLICATION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P5 ORDER.

EXT.P11.COPY OF THE STAY PETITION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P6 REVISION APPLICATION

EXT.P12.COPY OF THE STAY PETITION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P7 REVISION APPLICATION.

EXT.P13. COPY OF THE STAY PETITION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P8 REVISION APPLICATION.

EXT.P14.COPY OF THE STAY PETITION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P9 REVISION APPLICATION.

EXT.P15.COPY OF THE STAY PETITION DATED 10-06-2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CHALLENGING EXT.P10 REVISION APPLICATION.

EXT.P16. COPY OF ORDER NO. 156/15,157/15,158/15,159/15 & 160/15 DATED 31-08-2015 PASSED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

PA TO JUDGE

JV

**ANIL K. NARENDRA, J.**

**W.P.(C) No.29942 of 2015**

**Dated this the 08<sup>th</sup> day of October, 2015**

**JUDGMENT**

The petitioner, who is an assessee of KVAT, has filed this writ petition seeking a writ of certiorari to quash Ext.P16 conditional order of stay granted by the 2<sup>nd</sup> respondent and seeking a declaration that the petitioner is entitled for an absolute stay against Exts.P1 to P5 orders.

2. From the pleadings on record, it is seen that Exts.P1 to P5 penalty orders were passed by the 3<sup>rd</sup> respondent on the assumption that the petitioner is liable to pay tax under Section 6(2)(c) of the KVAT Act. The petitioner would contend that the aforesaid provision is applicable only in cases where works contract is awarded to a works contractor. Challenging the penalty imposed in Exts.P1 to P5 the petitioner filed Exts.P6 to P10 revision petitions before the 2<sup>nd</sup> respondent. Alongwith the said revision petitions, the petitioner has also filed Exts.P11 to P15 stay petitions. In the said stay petitions, the 2<sup>nd</sup> respondent passed Ext.P16 conditional order of stay by which the petitioner

has been directed to remit 50% of the penalty demanded in Exts.P1 to P5. It is aggrieved by the aforesaid conditional order of stay, the petitioner is before this Court in this writ petition seeking various reliefs.

3. I heard the arguments of the learned counsel for the petitioner and also the learned Senior Government Pleader appearing for the respondents.

4. A reading of Ext.P16 order passed by the 2<sup>nd</sup> respondent would show that it is virtually a non-speaking order. No reasons whatsoever have been stated in Ext.P16, in order to impose a condition of payment of 50% of penalty. When the 2<sup>nd</sup> respondent has to exercise its discretion in a judicial manner, an order like Ext.P16, which is vitiated by total non-application cannot be sustained.

In the result, Ext.P16 order passed by the 2<sup>nd</sup> respondent is set aside and the 2<sup>nd</sup> respondent is directed to reconsider Exts.P11 to P15 applications for stay and pass a reasoned order, after meeting the contentions raised by the petitioner. An order in this regard shall be passed within a period of one month from the date of production of a certified copy of this judgment. Till

such time, all recovery proceedings based on Exts.P1 to P5  
penalty orders shall be kept in abeyance.

JV

SD/-  
**ANIL K. NARENDRAN,**  
**JUDGE**