IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 31399 of 2015 (Y)

PETITIONER(S):

POOMULLY ARAM THAMPURAN SMARAKA TRUST
PERINGODE P.O, VIA KOOTTANADU, PALAKKAD
679 535 , REPRESENTED BY ITS MANAGING TRUSTEE
P.M NARAYANAN NAMBOODIRIPPAD

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

RESPONDENT(S):
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1. THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVT., TAXES DEPARTMENT SECRETARIAT, THIRUVANANTHAPURAM 685 001

2. THE INTELLIGENCE OFFICER, SQUAD NO. VI COMMERCIAL TAXES, PALAKKAD (CAMP AT OTTAPPALAM) 678 001

3. THE COMMERCIAL TAX OFFICER COMMERCIAL TAXES, PATTAMBI - 679 303

4. THE DEPUTY COMMISSIONER (APPEALS - I) KOTTAYAM (LOCATED AT ERNAKULAM) COMMERCIAL TAXES, ERNAKULAM - 682 015

R BY SPECIAL GOVERNMENT PLEADER SRI. K. SUDHISH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 31399 of 2015 (Y)

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1	**COPY OF ORDER DT D. 30.05.15 PASSED BY THE 2ND RESPONDENT U/S 17A OF THE KLT ACT, PERTAINING TO THE YEAR 2012-13**
EXT.P2	**COPY OF ORDER DT D. 30.05.15 PASSED BY THE 2ND RESPONDENT U/S 17A OF THE KLT ACT, PERTAINING TO THE YEAR 2013-14**
EXT.P3	**COPY OF ORDER DT D. 30.05.15 PASSED BY THE 2ND RESPONDENT U/S 17A OF THE KLT ACT, PERTAINING TO THE YEAR 2014-15**
EXT.P4	**COPY OF THE APPEAL MEMORANDUMS (WITHOUT ANNEXURES) DTD. 14.7.15 FILED BY THE PETITIONER AGANST EXT.P1**
EXT.P5	**COPY OF THE APPEAL MEMORANDUMS (WITHOUT ANNEXURES) DTD. 14.7.15 FILED BY THE PETITIONER AGANST EXT.P2**
EXT.P6	**COPY OF THE APPEAL MEMORANDUMS (WITHOUT ANNEXURES) DTD. 14.7.15 FILED BY THE PETITIONER AGANST EXT.P3**
EXT.P7	**COPY OF THE STAY PETITION DTD. 14.07.15, FILED BY THE PETITIONER AGAINST EXT.P1 ORDER, BEFORE THE 4TH RESPONDENT.**
EXT.P8	**COPY OF THE STAY PETITION DTD. 14.07.15, FILED BY THE PETITIONER AGAINST EXT.P2 ORDER, BEFORE THE 4TH RESPONDENT.**
EXT.P9	**COPY OF THE STAY PETITION DTD. 14.07.15, FILED BY THE PETITIONER AGAINST EXT.P3 ORDER, BEFORE THE 4TH RESPONDENT.**
EXT.P10	**COPY OF THE COMMON STAY ORDER DTD. 23.09.2015 PASSED BY THE 4TH RESPONDENT FOR THE YEARS 2012-13, 2013-14 AND 2014-15.**

RESPONDENTS EXHIBITS: **NIL**

// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.
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W.P.(C) No.31399 of 2015 - Y
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Dated this the 15th day of October, 2015

JUDGMENT

The petitioner is aggrieved with the consideration of the stay application made at Ext.P10 and the condition imposed of paying an amount of 30% of the demand made. The Intelligence Officer, the 2nd respondent herein conducted an inspection of the petitioner's premises and found that the petitioner was labile to be registered under the Kerala Tax on Luxuries Act, 1976 (for brevity, 'the Act'). Notices were issued under Section 17A of the Act for not having registered the Unit and for imposing penalty. Notices were issued and on the basis of the inspection conducted; an order was passed imposing penalty for three years from 2012 to 2013 coming to more than Rs.20,00,000/-. The petitioner filed appeal along with a stay application; the conditioned order passed wherein is impugned herein.

2. The short contention raised by the petitioner before the appellate authority and before this Court, is that the petitioner is not liable for registration, since the essential requirement for being covered under the Act requires a minimum of five rooms, with more than Rs.1,000/- as the daily rent; which later requirement is not satisfied. The Intelligence Officer however has continued the proceedings on the premise that the Ayruvedic treatment charge should also be included in the amenities; being not specifically excluded. The Intelligence Officer has excluded 30% of the treatment charges and included 70% in the computation of accommodation charges for a day, in which event, the Unit would be covered under the Act.

3. Prima faice it is to be noticed that the reckoning of 70% of the Ayurveda treatment charges for the purpose of accommodation charges, has been done only looking at the

alleged astronomical amounts charged; as is illustrated in Ext.P1. An amount of Rs.65,110/- is billed for Ayurvedic treatment charges for a period of 31 days. However, there is absolutely no enquiry as to what exactly is the treatment or the materials and personnel employed. Admittedly, there is no provision in the statute which prescribes such inclusion to be made or which enables disallowance of a percentage as has been done herein.

4. In that context, the individual bill had to be looked into, by the Intelligence Officer and the same could have been also compared with the charges so levied by the other institutions; even those under the Government. The charges could also have been referred for expert opinion. No such enquiry having been done, this Court is unable to accept the reckoning of treatment charges as accommodation charges for bringing the unit under the coverage of the Act; especially employing a percentage not sanctioned by law, which could only

result in the conclusion to be of a subjective nature.

5. It is made clear that the observations are merely in the nature of prima faice observations, which shall not govern consideration of the appeal itself. However, on such prima faice consideration, this Court is of the opinion that the impugned order cannot be sustained. The same shall be set aside and there shall be a stay of recovery till the appeal is disposed of. The petitioner shall cooperate with the speedy disposal of the appeal; if so required by the Department before the Appropriate Authority.

The writ petition hence would stand allowed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/15 /10 /2015

// true copy //

P.A to Judge.