

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 33885 of 2014 (I)

PETITIONER(S):

**BAIJU.K., AGED 52 YEARS,
HOTEL AMBALAKKARA REGENCY, PULAMON, KOTTARAKKARA,
KOLLAM DISTRICT.**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON**

RESPONDENT(S) :

- 1. ASST.COMMISSIONER-1
COMMERCIAL TAXES SPECIAL CIRCLE, KOLLAM- 691 001.**
- 2. DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, KOLLAM- 691 001.**
- 3. TAHSILDAR,
TALUK OFFICE, KOTTARAKKARA- 691 506.**

BY SR.GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: COPY OF ORDER ISSUED BY THE 1ST RESPONDENT
DATED 26.12.2012.
- EXT.P1(A): COPY OF ORDER ISSUED BY THE 1ST RESPONDENT
DATED 26.12.2012.
- EXT.P1(B): COPY OF ORDER ISSUED BY THE 1ST RESPONDENT
DATED 26.12.2012.
- EXT.P1(C): COPY OF ORDER ISSUED BY THE 1ST RESPONDENT
DATED 26.12.2012.
- EXT.P-2: COPY OF REVISION PETITION FILED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT DATED 21.05.2014.
- EXT.P2(A): COPY OF REVISION PETITION FILED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT DATED 21.05.2014.
- EXT.P2(B): COPY OF REVISION PETITION FILED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT DATED 21.05.2014.
- EXT.P2(C): COPY OF REVISION PETITION FILED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT DATED 21.05.2014.
- EXT.P3: COPY OF DELAY PETITION FILED BY THE PETITIONER
DATED 10.06.2014.
- EXT.P3(A): COPY OF DELAY PETITION FILED BY THE PETITIONER
DATED 10.06.2014.
- EXT.P3(B): COPY OF DELAY PETITION FILED BY THE PETITIONER
DATED 10.06.2014.
- EXT.P3(C): COPY OF DELAY PETITION FILED BY THE PETITIONER
DATED 10.06.2014.
- EXT.P4: COPY OF AFFIDAVIT FILED BY THE PETITIONER DATED 10.05.2014.
- EXT.P5: COPY OF ORDER IN RP NO.119/2014 ISSUED BY
THE 2ND RESPONDENT DATED 10.12.2014.
- EXT.P5(A): COPY OF ORDER IN RP NO.120/2014 ISSUED BY
THE 2ND RESPONDENT DATED 10.12.2014.
- EXT.P5(B): COPY OF ORDER IN RP NO.121/2014 ISSUED BY
THE 2ND RESPONDENT DATED 10.12.2014.
- EXT.P5(C): COPY OF ORDER IN RP NO.122/2014 ISSUED BY
THE 2ND RESPONDENT DATED 10.12.2014.

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- EXT.P-6: COPY OF DEMAND DRAFT NO.882248 PAID BY THE PETITIONER
DATED 30.03.2013.**
- EXT.P-7: COPY OF PENALTY ORDER ISSUED BY THE INTELLIGENCE OFFICER,
KOLLAM DATED 24.10.2011.**
- EXT.P-7(A): COPY OF APPEAL FILED BY THE PETITIONER DATED 30.11.2011.**
- EXT.P-8: COPY OF ORDER ISSUED BY THE 2ND RESPONDENT
DATED 05.08.2014.**
- EXT.P-9: COPY OF NOTICE IN FORM NO.11 ISSUED BY THE 3RD RESPONDENT
DATED 31.10.2014.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.33885 of 2014 (I)

.....
Dated this the 5th day of January, 2015

JUDGMENT

The petitioner, who is running a bar attached hotel, is an assessee on the rolls of the first respondent under the Kerala Value Added Tax Act, 2003. Against orders of penalty for the assessment years 2009-2010 to 2012-2013, the petitioner had preferred Ext.P2 series of revisions before the second respondent. Along with the said revision applications, he had also preferred Ext.P3 series of petitions for condonation of delay in filing the revision petitions. Ext.P4 affidavit was also filed explaining the reason for the delay in filing the revision applications. The second respondent considered Ext.P3 series of petitions, preferred by the petitioner for condonation of delay, and proceeded to reject the same by Ext.P5 series of orders. In Ext.P5 series of orders, the second respondent finds that there was no valid reason put forth by the petitioner to explain the delay in filing the revision petitions. As a consequence of Ext.P5 series of orders rejecting the petitions for condonation of delay, Ext.P2 series of revisions also came to be dismissed by the second respondent.

2. In the writ petition, Ext.P5 series of orders of the second

respondent is impugned inter alia on the ground that the respondent did not validly exercise the discretion vested in him while passing orders in the petitions preferred by the petitioner for condonation of delay in filing the revision applications.

3. I have heard the learned Government Pleader appearing for the respondents. It is pointed out that the petitioner had, during the pendency of the proceedings before the second respondent and thereafter, effected payments of Rs.10,64,400/- and Rs.2,00,000/- pursuant to an interim order passed by this Court in this writ petition. It is stated that there is a balance amount of almost Rs.12,00,000/- that is due from the petitioner pursuant to Ext.P1 series of orders passed against him.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that, in Ext.P5 series of orders that is impugned in the writ petition, the second respondent has taken a rather strict view with regard to condonation of delay. On a perusal of Ext.P4 affidavit, filed by the petitioner in support of his petition for condonation of delay, the circumstances that led to the revision petitions being filed with a delay are

spelt out. On a perusal of the said reasons, I am of the view that the second respondent ought to have condoned the delay in filing the revision petitions and adjudicated the matter on merits. The second respondent ought to have borne in mind the decision of the Supreme Court in **Collector of Land Acquisition vs. MSG Katiji & others (1987) 66 STC 229** while considering the delay condonation applications preferred by the petitioner. I, therefore, quash Ext.P5 series of orders of the second respondent and direct the second respondent to consider Ext.P2 series of revision petitions filed by the petitioner before him, on merits, after affording the petitioner an opportunity of being heard. The petitioner shall pay a further amount of Rs.50,000/- within a period of ten days from the date of receipt of a copy of this judgment, as a pre-condition for the hearing of the revision petition before the second respondent. On the petitioner effecting the payment as directed above, the second respondent shall pass orders on the revision petitions, after hearing the petitioner, as directed in this judgment within a period of three months.

5.The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the second respondent for further steps.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/06/01/