

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

WP(C).No. 35826 of 2015 (C)

PETITIONER(S) :

**M/S.MY HOME VILLAS AND APARTMENTS, ALUVA,
REPRESENTED BY ITS PARTNER, K.P.JOSE.**

**BY ADVS.SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM**

RESPONDENT(S) :

- 1. THE INTELLIGENCE OFFICER (IB),
DEPT. OF COMMERCIAL TAXES,
MATTANCHERY AT MINI CIVIL STATION, ALUVA.**
- 2. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERY- 682 002.**
- 3. THE INSPECTING ASST. COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERY- 682 002.**

BY GOVERNMENT PLEADER SMT.LILLY K.T

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 35826 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE PENALTY ORDER NO.IBM-1/IR-72/2014-15/
OR-10/2015-16 DATED 27.07.2015 FOR THE YEAR 2010-11.**

**EXHIBIT P2: TRUE COPY OF THE PENALTY ORDER NO.IBM-1/IR-72/2014-15/
OR-10/2015-16 DATED 27.07.2015 FOR THE YEAR 2011-12.**

EXHIBIT P3: TRUE COPY REVISION DATED 22.08.2015 FOR THE YEAR 2010-11.

EXHIBIT P4: TRUE COPY REVISION DATED 22.08.2015 FOR THE YEAR 2011-12.

**EXHIBIT P5: TRUE COPY OF THE STAY ORDER NO.KVATA RP.NO.50/15-16 AND
51/15-16 DATED 19.10.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 35826 of 2015

Dated this the 26th day of November, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 order passed by the 2nd respondent in a stay application filed along with revision petitions against an order of penalty for the assessment years 2010-11 and 2011-12, under the Kerala Value Added Tax Act, hereinafter referred to as the KVAT Act. The grievance of the petitioner in the writ petition is essentially that, while passing Ext.P5 order, the 2nd respondent did not exercise its discretion validly.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P5 order, there is no express reason given by the 2nd respondent for rejecting the application preferred by the petitioner for a stay of recovery of amounts confirmed against him. There is also no discussion on the merits of the case, although there is a reference to the averments made by the petitioner in the revision petitions,

filed before the respondent authority. I therefore, find that Ext.P5 order is vitiated by a patent non application of mind, and quash Ext.P5 order and direct the 2nd respondent to consider and pass orders on Exts.P3 and P4 revision petitions, after hearing the petitioner, within a period of two months from the date of receipt of a copy of this judgment. I make it clear that, till such time as orders are passed by the 2nd respondent as directed and communicated to the petitioner, recovery steps for recovery of amounts confirmed against the petitioner by Exts.P1 and P2 orders, shall be kept in abeyance.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE