IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 36677 of 2015 (H)

PETITIONER:

N.C.GARDENS & BEACH RESORT
ARIYALLUR P.O., MALAPPURAM,
REPRESENTED BY ITSMANAGING PARTNER,
N.C.MOHANAN, S/O.V.GOVINDAN NAIR, AGED 52,
RESIDING AT N.C.HOUSE, P.O.ARIYALLUR,
MALAPPURAM DISTRICT.

BY ADVS.SRI.K.T.SHYAMKUMAR
SRI.HARISH R. MENON

RESPONDENT(S):

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1. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES DEPARTMENT,
ERNAKULAM IN CHARGE OF
MALAPPURAM, PIN - 670 028.

2. THE COMMERCIAL TAX OFFICER (LUXURY TAX),
COMMERCIAL TAXES DEPARTMENT,
MALAPPURAM AT MANJERI, PIN - 670 014.

3. THE DEPUTY TAHASILDAR (REVENUE RECOVDRY),
TIRURANGADI, MALAPPURAM DISTRICT, PIN - 670 024.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1. **TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2007-2008.**

EXHIBIT P2. **TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2007-2008.**

EXHIBIT P3. **TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2008-2009.**

EXHIBIT P4. **TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2009-20010 ISSUED BY THE 2ND RESPONDENT.**

EXHIBIT P5. **TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2010-2011.**

EXHIBIT P6. **TRUE COPY OF THE PENALTY ORDER DATED 11.03.2013 FOR THE YEAR 2010-2011 ISSUED BY THE 2ND RESPONDENT.**

EXHIBIT P7. **TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2011-2012.**

EXHIBIT P8. **TRUE COPY OF THE PENALTY ORDER FOR THE YEAR 2011-2012.**

EXHIBIT P9. **TRUE COPY OF THE JUDGMENT DATED 28.10.2014 IN W.P.(C)NO.5723/2010 AND CONNECTED CASES.**

EXHIBIT P10. **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2007-2008.**

EXHIBIT P11. **TRUE COPY OF THE PETITION FOR STAY FILED IN THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2007-2008.**

EXHIBIT P12. **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED ALONG WITH THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2007-2008.**

EXHIBIT P13. **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST THE PENALTY ORDER FOR THE YEAR 2007-2008.**

EXHIBIT P14. **TRUE COPY OF THE PETITION FOR STAY FILED IN THE APPEAL AGAINST THE PENALTY ORDER FOR THE YEAR 2007-2008.**

EXHIBIT P15. **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED ALONG WITH THE APPEAL AGAINST THE PENALTY ORDER FOR THE YEAR 2007-2008.**

EXHIBIT P16. **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2008-2009.**

EXHIBIT P17. **TRUE COPY OF THE PETITION FOR STAY FILED IN THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2008-2009.**

EXHIBIT P18. **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED ALONG WITH THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2008-2009.**

EXHIBIT P19. **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2009-2010.**

EXHIBIT P20. **TRUE COPY OF THE PETITION FOR STAY FILED IN THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2009-2010.**

EXHIBIT P21. **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED ALONG WITH THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2009-2010.**

EXHIBIT P22. **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2010-2011.**

EXHIBIT P23. **TRUE COPY OF THE PETITION FOR STAY FILED IN THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2010-2011.**

EXHIBIT P24. **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED ALONG WITH THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2010-2011.**

EXHIBIT P25. **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST THE PENALTY ORDER FOR THE YEAR 2010-2011.**

EXHIBIT P26. **TRUE COPY OF THE PETITION FOR STAY FILED IN THE APPEAL AGAINST THE PENALTY ORDER FOR THE YEAR 2010-2011.**

EXHIBIT P27. **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED ALONG WITH THE APPEAL AGAINST THE PENALTY ORDER FOR THE YEAR 2010-2011.**

EXHIBIT P28. **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2011-2012.**

EXHIBIT P29. **TRUE COPY OF THE PETITION FOR STAY FILED IN THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2011-2012.**

EXHIBIT P30. **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED ALONG WITH THE APPEAL AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2011-2012.**

EXHIBIT P31. **TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AGAINST THE PENALTY ORDER FOR THE YEAR 2011-2012.**

EXHIBIT P32. **TRUE COPY OF THE PETITION FOR STAY FILED IN THE APPEAL AGAINST THE PENALTY ORDER FOR THE YEAR 2011-2012.**

EXHIBIT P33. **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY FILED ALONG WITH THE APPEAL AGAINST THE PENALTY ORDER FOR THE YEAR 2011-2012.**

EXHIBIT P34. **TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 22.12.2011.**

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EXHIBIT P35. **TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 11.10.2013 FOR THE ASSESSMENT YEAR 2009-2010.**

EXHIBIT P36. **TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 11.10.2013 FOR THE ASSESSMENT YEAR 2010-2011.**

EXHIBIT P37. **TRUE COPY OF THE JUDGMENT DATED 09.04.2015 IN W.P.(C)NO.11847/2015.**

EXHIBIT P38. **TRUE COPY OF THE ORDER DATED 25.09.2015 ISSUED BY THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 36677 of 2015
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Dated this the 8th day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P38 order passed by the 1st respondent rejecting an application for condonation of delay filed by the petitioner under the Kerala Tax on Luxuries Act, on the ground that under the said Act, there is no provision permitting the 1st respondent to condone the delay in filing an appeal. As a consequence of the rejection of the delay condonation application, the appeals preferred by the petitioner themselves have been dismissed.

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 this Court had by Ext.P9 judgment, relegated the petitioner to his alternate remedy of preferring an appeal in terms of the Kerala Tax on Luxuries Act, before the appellate authority under the Act. In the writ petition that led to Ext.P9 judgment, the assessment orders passed under the Kerala Tax on Luxuries Act, were impugned before this Court and the writ petitions filed in 2010, 2012 and 2013, were finally disposed by Ext.P9 judgment dated 28.10.2014, relegating the petitioner to his alternate remedy of filing appeals. It was on account of the pendency of the writ petition, that the petitioner could not initially file the appeals against assessment orders, under the Kerala Tax on Luxuries Act within the time stipulated under the Act. Eventually, when by Ext.P9 judgment, the petitioner was relegated to his alternate remedy of filing an appeal, he approached the appellate authority and thereafter, approached this Court through a writ petition seeking a direction to the appellate authority to consider the petitions for condonation of delay, as also the stay petitions, during the pendency of the appeals pending before the appellate authority. By Ext.P37 judgment, this Court directed the appellate authority to consider and pass orders on the delay condonation petitions and stay petitions and it was thereupon that the 1st respondent appellate authority proceeded to pass Ext.P38 order, rejecting the delay condonation application. I find that, inasmuch as the petitioner was pursuing his remedy against the assessment orders before this Court in the writ petitions that led to Ext.P9 judgment, these appeals should be taken as haviing been filed without any delay, by excluding the period that was spent pursuing the writ petitions before this Court. Accordingly, I quash Ext.P38 order and direct the 1st respondent appellate authority to consider and pass orders in the appeals preferred by the petitioner, against the assessment orders under the Kerala Tax on Luxuries Act. I make it clear that, till such time as the 1st respondent passes orders in Exts.P10, P13, P16, P19, P22, P28 and P31 appeals, as directed, and communicates the same to the petitioner, coercive steps for recovery of amounts confirmed against the petitioner by various assessment orders, shall be kept in abeyance.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /8.12.15