

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937**

**WP(C).No. 37792 of 2015 (Y)**  
-----

**PETITIONER:**  
-----

**KOTHAMANGALAM MUNICIPALITY,  
KOTHAMANGALAM,  
ERNAKULAM DISTRICT, PIN: 686 691,  
REPRESENTED BY ITS SECRETARY.**

**BY ADVS.SRI.V.M.KURIAN  
SRI.MATHEW B. KURIAN  
SRI.K.T.THOMAS  
SRI.ISAC T.PAUL**

**RESPONDENT(S):**  
-----

- 1. THE COMMISSIONER OF CENTRAL EXCISE (APPEALS),  
C.R.BUILDING, I.S. PRESS ROAD, KOCHI, PIN: 682 018.**
- 2. THE ADDITIONAL COMMISSIONER OF CENTRAL EXCISE,  
CUSTOMS & SERVICE TAX, C.R.BUILDING,  
I.S.PRESS ROAD, KOCHI, PIN: 682 018.**
- 3. THE DEPUTY COMMISSIONER OF CENTRAL EXCISE,  
K.P.C. TOWERS, T.B.JUNCTION,  
MUVATTUPUZHA, PIN: 686 681.**
- 4. THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE,  
K.P.C TOWERS, T.B.JUNCTION,  
MUVATTUPUZHA, PIN: 686 681.**
- 5. THE SUPERINTENDENT OF CENTRAL EXCISE & SERVICE TAX,  
VALLAMATTOM BUILDING, ARAKKUZHA ROAD,  
MUVATTUPUZHA, PIN: 686 661.**
- 6. THE ERANAKULAM DISTRICT CO-OPERATIVE BANK LTD.,  
KOTHAMANGALAM BRANCH, KOTHAMANGALAM, PIN: 686 691,  
REPRESENTED BY ITS MANAGER.**

**R1 TO R5 BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC  
R6 BY SMT.I.SHEELA DEVI, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**mbr/**

WP(C).No. 37792 of 2015 (Y)

-----

**APPENDIX**

**PETITIONER(S)' EXHIBITS:**

-----

- P1: TRUE PHOTOCOPY OF APPEAL NO.177/2013 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- P2: TRUE PHOTOCOPY OF WAIVER PETITION IN APPEAL NO.177/2013 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- P3: TRUE PHOTOCOPY OF APPEAL NO.12/2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- P4: TRUE PHOTOCOPY OF THE LETTER DATED 15/7/2014 ISSUED BY THE PETITIONER TO THE 4TH RESPONDENT.
- P5: TRUE PHOTOCOPY OF THE NOTICE DATED 7/12/2015 ISSUED BY THE 5TH RESPONDENT TO THE 6TH RESPONDENT.

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

-----

**//TRUE COPY//**

**P.S. TO JUDGE**

**mbr/**

**A.K.JAYASANKARAN NAMBIAR, J.**

**W.P.(C) No.37792 of 2015**

Dated this the 17<sup>th</sup> day of December 2015

**JUDGMENT**

The petitioner, which is an institution of local self government, is aggrieved by Ext.P5 notice, that is issued to it under Section 87 of Chapter V of the Finance Act, 1994, governing of levy of service tax. It is the case of the petitioner that by three orders, namely, 109/2012-S.T dated 24.05.2012, 21/2013-S.T dated 25.04.2013 and 25/2014-S.T dated 23.12.2014, substantial amounts by way of service tax, education CESS and interest have been confirmed against the petitioner. Although the petitioner has preferred appeals against the 2<sup>nd</sup> and 3<sup>rd</sup> orders referred to above, the petitioner has not preferred any appeal against the 1<sup>st</sup> order. The demand in Ext.P5 is in respect of the amounts confirmed by all the three orders referred to above. The petitioner submits that it is currently facing a financial crunch and if the demands are attempted to be realised from the petitioner at this stage, it would cripple the activities of the petitioner, which is a local self government institution, and that would not be in public interest. Reliance is placed on Circular No.996/3/2015-CX dated 28.02.2015 for the purpose of contending that the respondents are empowered

to grant the petitioner the facility of payment of defaulted amounts in installments, considering the financial position of the petitioner.

2. I have heard the learned counsel for the petitioner and the learned standing counsel for respondents 1 to 5 and Smt.I.Sheela Devi, for respondent No.6.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that against the 2<sup>nd</sup> and 3<sup>rd</sup> orders mentioned above, the petitioner has preferred Exts.P1 and P3 appeals before the 1<sup>st</sup> respondent appellate authority. The demand in Ext.P5 notice to the extent it pertains to those orders which are the subject matter of the appeals cannot be sustained as of now. As regards the demand pursuant to the 1<sup>st</sup> order referred to above, I find that the circular relied upon by the petitioner would come to its aid in seeking a facility of instalments from the respondents. Under the above circumstances, I dispose the writ petition with the following directions:-

- (i) The 1<sup>st</sup> respondent shall consider and pass orders on Exts.P1 and P3 appeals within a period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner. Recovery steps for recovery of amounts confirmed against the petitioner by the orders that are

impugned in the said appeals, namely, the 2<sup>nd</sup> and 3<sup>rd</sup> orders referred to in the annexure to Ext.P5 notice, shall be kept in abeyance till such time as orders are passed by the 1<sup>st</sup> respondent as directed and communicated to the petitioner.

(ii) As regards the recovery of amounts confirmed against the petitioner by the 1<sup>st</sup> order referred to in the annexure to Ext.P5, I make it clear that the recovery steps for recovery of the said amount shall be kept in abeyance for a period of one month from today, so as to enable the petitioner to approach the 2<sup>nd</sup> respondent with a request for extension of facility of instalments to pay the defaulted amounts. If the petitioner prefers an application before the 2<sup>nd</sup> respondent within the time granted above, then the 2<sup>nd</sup> respondent shall consider the same and pass orders on the said representations within a month from the date of receipt of the said representation. I make it clear that the petitioner will be free to operate the bank accounts which are the subject matter in Ext.P5 notice, during the period of operation of the stay granted in this judgment.

Sd/-  
**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

sm/