IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 15TH DAY OF DECEMBER 2020 / 24TH AGRAHAYANA, 1942

WP(C).No.27927 OF 2020(M)

PETITIONER:

NELLIMATTATHIL AGENCIES
IV/557 B, THIRUVANIYOOR
THIRUVANIYOOR P.O,
ERNAKULAM – 682308
REPRESENTED BY ITS PROPRIETOR
ANO ALIYAS, AGED 43 YEARS, S/O. K. ALIYAS

BY ADVS.
DR.K.P.PRADEEP
SHRI.HAREESH M.R.
SRI.T.T.BIJU
SMT.T.THASMI

RESPONDENTS:

1 **STATE OF KERALA**
REPRESENTED BY ITS SECRETARY,
(TAXES, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM- 695001

2. **STATE TAX OFFICER**
KERALA STATE GST DEPARTMENT
SQUD IV, MATTANCHERRY, MINI CIVIL STATION,
ALUVA – 683101

3. **THE DEPUTY COMMISSIONER (APPEALS)**
DEPARTMENT OF KERALA STATE GOODS AND
SERVICE TAX, TAX OFFICE, THEVARA,
ERNAKULAM, 682015

4. **ASSISTANT COMMISSIONER**
KERALA STATE GST DEPARTMENT
MUVATTUPUZHA, ERNAKULA- 686661

GP: THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Against Ext.P1 series of assessment orders under the KVAT Act, the petitioner has preferred Ext.P2 series of appeals and Ext.P3 series of stay petitions before the 3rd respondent. Ext.P4 series are the revenue recovery notices. In the writ petition, it is the case of the petitioner that the 3rd respondent is not entertaining the appeals and the stay petition for the sole reason that the petitioner has not paid the disputed 1% towards the Kerala Legal Benefit Fund. It is the case of the petitioner that he has already paid 0.5% of the amounts due towards the Kerala Legal Benefit Fund and on account of an order passed by a Division Bench judgment of this Court, has chosen not to pay the balance amount pending disposal of the OP (Tax) before the Division Bench.

2. Taking note of the said averments in the writ petition, I dispose the writ petition with a direction to the 3rd respondent to entertain the appeals and the stay petitions, by provisionally accepting the payment of 0.5% towards KLBF, and a bond for the differential amount, and to consider and pass orders on Ext.P3 series of stay petition within a period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner. Recovery steps pursuant to Ext.P4 series of revenue recovery notices shall be kept in abeyance till such time as the orders are passed by the 3rd respondent as directed and communicated to

the petitioner.

It is made clear that in the event of the issue in OP Tax No.2 of 2017 being decided against the assessee, it will be open to the respondent to proceed against the petitioner for recovery of the differential amount of the Kerala Legal Benefit Fund is by invoking the bond furnished by the petitioner for the said amount. The petitioner shall produce a copy of the writ petition together with a copy of this judgment, before the 3rd respondent, for further action.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

SJ

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE PENALTY ORDER NO. ISM/IV/56/2015-16(2014-15) DATED 31.01.2019 ISSUED BY THE 2ND RESPONDENT.**
EXHIBIT P1(a)	**TRUE COPY OF THE PENALTY ORDER NO. ISM/IV/56/2015-16 DATED 31.01.2019 ISSUED BY THE 2ND RESPONDENT.**
EXHIBIT P2	**TRUE COPY OF THE APPEAL DATED 29.03.2019 AGAINST THE PENALTY ORDER FOR THE YEAR 2014-15 IS FILED AND PENDING BEFORE THE 3RD RESPONDENT.**
EXHIBIT P2(a)	**TRUE COPY OF THE APPEAL DATED 29.03.2019 AGAINST THE PENALTY ORDER FOR THE YEAR 2015-16 IS FILED AND PENDING BEFORE THE 3RD RESPONDENT.**
EXHIBIT P3	**TRUE COPY OF THE STAY APPLICATION DATED 29.03.2019 AGAINST THE PENALTY ORDER FOR THE YEAR 2014-15 IS FILED AND PENDING BEFORE THE 3RD RESPONDENT**
EXHIBIT P3(a)	**TRUE COPY OF THE STAY APPLICATION DATED 29.03.2019 AGAINST THE PENALTY ORDER FOR THE YEAR 2015-16 IS FILED AND PENDING BEFORE THE 3RD RESPONDENT**
EXHIBIT P4	**TRUE COPY OF THE NOTICE DATED 18.1.2020 ISSUED BY THE 4TH RESPONDENT FOR THE YEAR 2014-15**
EXHIBIT P4(a)	**TRUE COPY OF THE NOTICE DATED 18.01.2020 ISSUED BY THE 4TH RESPONDENT FOR THE YEAR 2015-16**