

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 19TH DAY OF FEBRUARY 2020 / 30TH MAGHA, 1941

WP(C).No.4751 OF 2020(T)

PETITIONER:

V.A.KURIAKOSE,  
AGED 65 YEARS,  
VALUTHUKARAN HOUSE, POIKKATTUSSERY,  
CHENGAMANAD P.O., ERNAKULAM-683 578.

BY ADVS.  
SRI.P.S.SOMAN  
SMT.T.RADHAMANY

RESPONDENTS:

- 1 THE ASSISTANT COMMISSIONER,  
SPECIAL CIRCLE, STATE GOODS AND SERVICE TAX  
DEPARTMENT, MATTANCHERRY AT ALUVA-683 101.
- 2 DEPUTY COMMISSIONER (APPEALS),  
DEPARTMENT OF COMMERCIAL TAXES, TAX COMPLEX,  
ERNAKULAM-682 015.
- 3 DEPUTY TAHSILDAR,  
TALUK OFFICE, MINI CIVIL STATION, ALUVA-683 101.

DR.THUSHARA JAMES, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
19.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

As against Ext.P1 order for the assessment year 2015-16 under the Kerala value Added Tax Act, petitioner preferred Ext.P2 appeal along with Ext.P3 stay application and Ext.P4 delay condonation application before the 2<sup>nd</sup> respondent. The case of the petitioner is that, the 3<sup>rd</sup> respondent is proceeding further with the revenue recovery prior to considering the stay petition, which impelled the petitioner to approach this Court.

2. This Court in W.P.(C) No.3800/2020 had passed a detailed order after having called the Assistant Commissioner of Law in court with regard to the numbering of appeal and hearing of the stay application. Several writ petitions are pending in this Court seeking redressal of grievance for non-hearing of the appeal, along with stay application.

3. This writ petition is also of the similar nature and the petitioner is in dilemma. In such circumstances, this Court cannot sit as a mute spectator without coming to the rescue of such litigants.

4. Accordingly, I dispose of this writ petition with the following directions:

I) Taking note of the fact that the delay in approaching the 2<sup>nd</sup> respondent is 18 days, I deem it appropriate to condone the delay and direct the 2<sup>nd</sup> respondent to consider and pass reasoned orders on Ext.P3 stay petition within a period of two months from the date of receipt of a copy of this judgment, as the petitioner in such circumstances had not opted for automatic stay in view of the amended provisions of Section 55 (4) of KVAT Act, 2003.

ii) Steps for recovery of amounts pertaining to Ext.P5 shall be kept in abeyance, till such time the stay application is disposed of. It is made clear that the interim

arrangement is only till the adjudication of the stay application. However, this will not stand in the way of the appellate authority deciding the appeal along with the stay application.

Sd/-

**AMIT RAWAL**

**JUDGE**

vv

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- |                   |   |
|-------------------|---|
| <b>EXHIBIT P1</b> | <b>TRUE COPY FO THE ASSESSMENT ORDER<br/>NO.32150858916/2015-16 DATED 30.8.2019<br/>ISSUED BY THE 1ST RESPONDENT.</b>                             |
| <b>EXHIBIT P2</b> | <b>TRUE COPY OF THE APPEAL MEMORANDUM<br/>FILED BEFORE THE 2ND RESPONDENT FOR<br/>THE YEAR 2015-16 DATED 5.11.2019.</b>                           |
| <b>EXHIBIT P3</b> | <b>TRUE COPY OF THE STAY PETITION FILED<br/>BEFORE THE 2ND RESPONDENT FOR THE YEAR<br/>2015-16 DATED 5.11.2019.</b>                               |
| <b>EXHIBIT P4</b> | <b>TRUE COPY OF THE DELAY CONDONATION<br/>PETITION FILED BEFORE THE 2ND<br/>RESPONDENT FOR THE YEAR 2015-16 DATED<br/>5.11.2019.</b>              |
| <b>EXHIBIT P5</b> | <b>TRUE COPY OF THE REVENUE RECOVERY<br/>NOTICE RRC NO.2019/14878/07 DATED<br/>16.11.2019 ISSUED BY THE 3RD<br/>RESPONDENT TO THE PETITIONER.</b> |

//TRUE COPY//  
PA TO JUDGE