IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

OP(C).No. 114 of 2014 (O)
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AGAINST THE JUDGMENT IN CMA 34/2013 of ADDL.DISTRICT COURT, KOZHIKODE
DATED 07-12-2013
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PETITIONER(S):
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DEEPCHAND K.P. AGED 38 YEARS,
S/O. MOHANAN, K.P.KANDAYI & SONS, INDIAN OIL DEALER,
PALATTUTHAZHAM, CIVIL STATION P.O., WAYANAD ROAD,
CALICUT-20.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S):
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THE DISTRICT COLLECTOR
COLLECTORATE, KOZHIKODE-671 001.

R BY GOVERNMENT PLEADER SRI.PADMALAYAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AD

**OP(C).No. 114 of 2014 (O)**
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**
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**EXT. P1 : A TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT DATED 2.7.2012.**

**EXT. P2 : A TRUE COPY OF THE NOTICE ISSUED DATED 18.4.2013.**

**EXT. P3 : A TRUE COPY OF THE ORDER PASSED BY THE HON'BLE DISTRICT COURT, KOZHIKODE, DATED 7.12.2013.**

**RESPONDENT(S)' EXHIBITS NIL**
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**//TRUE COPY//**

**P.A. TO JUDGE**

**AD**

**SUNIL THOMAS, J.**

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**O.P(C).No.114 of 2014**

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**Dated this the 10th day of September, 2015**

## JUDGMENT

The petitioner herein challenges Ext.P1 order of the City Rationing Officer dated 18.04.2015 and Ext.P3 judgment of the appellate authority (District court, Kozhikode) under Section 6(a) of the Essential Commodities Act, 1955.

2. The District Supply Officer, Kozhikode seized 19,440 ltrs of adulterated Kerosene carried in a tanker lorry. Since the petitioner herein was the authorised dealer of kerosene in the area, it was entrusted to the appellant for the open market sale. By Ext.P1 order, he was directed to sell the kerosene at a rate of Rs.62,331.70/Kilo litre. This direction was challenged by the petitioner herein in CMA No. 34/2013 before the District Court. The Court below after giving an opportunity of being heard to both sides dismissed the appeal by Ext.P3 judgment. This is under challenge in this original petition. The learned Counsel for the petitioner

and the learned Senior Government Pleader for the State were heard on 18.08.2015. The learned Counsel for the petitioner contended that the impugned order Ext.P3 is not legally sustainable since several objections raised by him in the appeal which were not considered by the Court below. However, the learned Government Pleader referred to Section 6(C) of the Essential Commodities Act and contended that the appeal itself was not sustainable. The learned Counsel contended was that by Section 5(b) of the Essential Commodities Act (special provisions Act of 1981), the authority of the appellate authority to be notified by the State Government was extended for a period of 10 years. The Essential Commodities Act (special provisions Act of 1981) showed that the period prescribed therein was 10 years from 27.08.1992. Consequently the Counsel contended that the appellate authority ceased to have jurisdiction with effect from 27.08.2012 onwards.

3. Though by order dated 18.08.2015 original petition was ordered to be disposed of, before signing the

order it was brought to the notice that prior to Ext.P3, the revenue recovery proceedings were under challenge in W.P(C)No.13327/2013(M) before this Court. The writ petition was disposed of by this Court directing the petitioner to seek his remedy elsewhere in accordance with the law. Thereafter he sought a stay of the recovery proceedings by filing O.P(C) No.3497/2013 (O) in which the Hon'ble High Court directed the appellate Court to dispose of the appeal itself before 31.12.2013. It was pursuant to this direction that the appellate authority concluded its proceedings. In the light of it, the matter was again listed and with notice to both sides, the earlier order was recalled and posted along with files of W.P(C) No.13327/2013. Both sides were again heard.

4. The judgment in W.P(C) No.13327/2013 shows that the learned Government Pleader at that time took the stand that the writ petition was not maintainable, since by virtue of SRO.749/2010 dated 26.07.2010, the competent authority to deal with an appeal against the order passed by the District Collector was the District and

Sessions Court. In the light of that submission, petitioner was relegated to the statutory forum. In the light of the above, the present stand that District Court did not have jurisdiction over the subject matter was without any basis.

5. The lower appellate Court has elaborately dealt with the main contention of the appellant that they were not in a position to sell at the rate fixed by the District Collector. The Court held that appellant had in fact sold the kerosene for a total sum of Rs.12,13,442.10. The Court also found that the price fixed by District Collector was as per advice of the State-level Co-ordinator from Indian Oil Corporation. Evidently the finding of the Court below is grounded on sound factual basis.

6. Since the Kerosene has now been sold, the quantity of Kerosene sold in open market and the rate at which it is sold cannot now be challenged by the petitioner herein. Consequently the sale proceeds is liable to be recovered from the petitioner. The learned Counsel for the petitioner submitted that if it is ultimately held that the amount is liable to be recovered, he may be granted

sometime to pay the money in instalments. I feel that this is a reasonable request. Hence the petitioner is granted six months time from today to comply with Ext.P1 during which period, the amount covered by Ext.P1 shall be remitted in six monthly instalments. In case the amount remains un paid after the expiry of six months, the State shall proceed with the revenue recovery proceedings in accordance with law. During the period of six months the revenue recovery proceedings should be kept in abeyance.

The original petition is accordingly disposed of.

Sd/-
**SUNIL THOMAS,**
**JUDGE**

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