

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 621 of 2015 (C)

PETITIONER(S) :

**SHAMEER, AGED 30 YEARS,
S/O.ABDUL KAREEM, MANAKKATTU HOUSE, MULAVOOR VILLAGE,
PEZHAKKAPPILLY KARA, PEZHAKKAPPILLY PO,
MUVATTUPUZHA TALUK, (PROPRIETOR P.V.M. PLYWOODS,
KANJIRAMATTOM, THODUPUZHA).**

**BY ADVS.SRI.SIRAJ KAROLY
SRI.R.PARAMESWARA IYER**

RESPONDENT(S) :

- 1. COMMERCIAL TAX OFFICER,
1ST CIRCLE, THODUPUZHA,
OFFICE OF THE COMMERCIAL TAX OFFICER, 1ST CIRCLE,
THODUPUZHA, IDUKKI DISTRICT- 685 051.**
- 2. DEPUTY COMMISSIONER OF SALES TAX,
COMMERCIAL TAX., IDUKKI, KATTAPPANA- 685 001.**
- 3. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF FINANCE AND TAXES,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 621 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE APPLICATION FOR REGISTRATION OF KVAT.

**EXHIBIT P2: TRUE COPY OF THE APPLICATION FOR REGISTRATION FOR CENTRAL
SALES TAX.**

**EXHIBIT P3: TRUE COPY OF THE RECEIPT FOR REMITTANCE OF REGISTRATION
FEE.**

EXHIBIT P4: TRUE COPY OF THE NOTICE DATED 01-12-2014.

**EXHIBIT P5: TRUE COPY OF THE JUDGMENT DATED 04-07-2012 IN
W.P.(C).NO. 12795 OF 2011.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.621 OF 2015

Dated this the 15th day of January, 2015

J U D G M E N T

The petitioner, who is stated to be an unemployed person intending to start a small plywood business for his livelihood, had approached the 1st respondent for a registration under the Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act') and Central Sales Tax Act (hereinafter referred to as 'the CST Act') for the purposes of commencing his business. By Ext.P4 notice, the petitioner was informed that he would have to comply with certain conditions for obtaining the registration under the KVAT and CST Act. Condition No.4 reads as under:

"4. You are requested to file Form 6 Bond for Rs.50,00,000/- attested Notary/bank Manager (Form No.6 Bond with 2 sureties with their possession certificate encumbrance certificate, self attested copy of land tax receipt, and the valuation certificates of the properties of the sureties from the concern/revenue authority.)

2. In the writ petition, the petitioner impugns Ext.P4 to the extent it imposes the aforesaid condition which, according to the petitioner, is onerous as far as a new entrepreneur is concerned.

3. I have heard Sri.Siraj Karoly, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader appearing on behalf of the respondents, who

submits that she has not received any instructions in the matter despite having sought for the same.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that condition No.4 in Ext.P4 notice requires the petitioner to furnish a bond for an exorbitant amount of money, which does not appear to be commensurate with the turnover that the petitioner expects to achieve in the first year of business. The provision requiring security to be furnished by a person seeking a registration under the KVAT and CST Act is Section 17 of the KVAT Act. The factors to be considered while demanding security in terms of S.17 have been indicated in Ext.P5 judgment, that was passed by this Court in the case of another person who, like the petitioner, was a new entrant to the business in plywood. The said judgment indicates that, notices issued by the 1st respondent to a person, such as the petitioner, cannot be mechanical in nature. The amount for which a bond is to be executed, as a condition for the grant of registration under the KVAT and CST Act, is to be arrived at after consideration of various factors which have been indicated in Ext.P5 judgment. In as much as in Ext.P4, I do not see such an exercise have been done by the 1st respondent, I quash Ext.P4 and direct the 1st respondent to reconsider the matter after taking into account the

turn over that the petitioner is likely to achieve in the first year of the business, and fix the amount for which a bond is to be executed by the petitioner accordingly. The 1st respondent shall issue a fresh notice incorporating the necessary conditions, including the condition with regard to the bond, as directed in this judgment. The same shall be done within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

