

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 775 of 2015 (V)

PETITIONER(S) :

MARGO BIO CONTROLS (P)LTD., AGED 54 YEARS
KALARICKAL BAZAR, KOTTAYAM
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR.KURIAN ISSAC.

BY ADVS.SRI.RAMESH CHERIAN JOHN
SRI.JOJO ISAAC NEYYARAPALLY

RESPONDENT(S) /RESPONDENTS:-:

1. THE COMMERCIAL TAX OFFICER,
OFFICE OF THE COMMERCIAL TAX OFFICER, 2ND CIRCLE
KOTTAYAM - 686 001.
2. THE COLLECTOR/AUTHORISED OFFICER,
INSPECTING ASST. COMMISSIONER
DEPARTMENT OF COMMERCIAL TAXES, KOTTAYAM.
3. THE DEPUTY COMMISSIONER (APPEALS) II,
OFFICE OF THE DEPUTY COMMISSIONER (APPEALS)
DEPARTMENT OF COMMERCIAL TAXES, KOTTAYAM.
4. THE MANAGER,
STATE BANK OF INDIA, MAIN BRANCH, KOTTAYAM.
5. STATE BANK OF INDIA,
MAIN BRANCH, KOTTAYAM
REPRESENTED BY ITS GENERAL MANAGER.
6. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, OFFICE OF THE DEPUTY COMMISSIONER
KOTTAYAM.
7. THE MANAGER,
HDFC, KOTTAYAM BRANCH.

R7 BY ADV. SRI.T.RAJESH, SC, HDFC BANK LTD.
R4 & 5 BY ADV. SMT.S.AMBILY
R1 to R3 & R6 BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1. TRUE COPY OF ASSESSMENT ORDER FOR A/Y 2005-06.
- EXHIBIT P2. TRUE COPY OF ASSESSMENT ORDER FOR A/Y 2006-07.
- EXHIBIT P3. TRUE COPY OF ASSESSMENT ORDER FOR A/Y 2007-08.
- EXHIBIT P4. TRUE COPY OF ASSESSMENT ORDER FOR A/Y 2008-09.
- EXHIBIT P4(A). TRUE COPY OF THE PENALTY ORDER FOR THE A/Y 2007-08.
- EXHIBIT P4(B). TRUE COPY OF THE PENALTY ORDER FOR THE A/Y 2008-09.
- EXHIBIT P5. TRUE COPY OF THE ORDE OF THE DY. COMMISSIONER (APPEALS) DATED 11.08.2008 FOR A/Y 2005-06.
- EXHIBIT P6. TRUE COPY OF THE ORDE OF THE DY. COMMISSIONER (APPEALS) DATED 11.08.2008 FOR A/Y 2006-07.
- EXHIBIT P7. TRUE COPY OF THE ORDER OF THE TRIBUNAL DATED 25.06.2008.
- EXHIBIT P8. TRUE COPY OF THE INTERIM ORDER OF THE HON'BLE HIGH COURT OF KERALA DATED 28.09.2011.
- EXHIBIT P9. TRUE COPY OF THE FORM APPEAL & GROUNDS OF APPEAL DATED 11.12.2013 FOR THE A/Y 2005-06 FILED BEFORE THE 3RD RESPONDENT, DY.COMMISSIONER (APPEALS), KOTTAYAM.
- EXHIBIT P10. TRUE COPY OF THE FORM APPEAL & GROUNDS OF APPEAL DATED 11.12.2013 FOR THE A/Y 2006-07 FILED BEFORE THE 3RD RESPONDENT, DY.COMMISSIONER (APPEALS), KOTTAYAM.
- EXHIBIT P11. TRUE COPY OF THE FORM APPEAL & GROUNDS OF APPEAL DATED 11.12.2013 FOR THE A/Y 2007-08 FILED BEFORE THE 3RD RESPONDENT, DY.COMMISSIONER (APPEALS), KOTTAYAM.
- EXHIBIT P12. TRUE COPY OF THE FORM APPEAL & GROUNDS OF APPEAL DATED 11.12.2013 FOR THE A/Y 2008-09 FILED BEFORE THE 3RD RESPONDENT, DY.COMMISSIONER (APPEALS), KOTTAYAM.
- EXHIBIT P13. TRUE COPY OF THE PETITION FOR STAY OF COLLECTION OF DEMAND FOR A/Y 2005-06.
- EXHIBIT P14. TRUE COPY OF THE PETITION FOR STAY OF COLLECTION OF DEMAND FOR A/Y 2006-07.
- EXHIBIT P15. TRUE COPY OF THE PETITION FOR STAY OF COLLECTION OF DEMAND FOR A/Y 2007-08.
- EXHIBIT P16. TRUE COPY OF THE PETITION FOR STAY OF COLLECTION OF DEMAND FOR A/Y 2008-09.
- EXHIBIT P16(A). TRUE COPY OF THE FORM OF APPEAL & GROUNDS OF APPEAL AGAINST ORDER OF PENALTY FOR A/Y 2007-08.

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EXHIBIT P16(B). TRUE COPY OF THE FORM OF APPEAL & GROUNDS OF APPEAL
AGAINST ORDER OF PENALTY FOR A/Y 2008-09.

EXHIBIT P16(C). TRUE COPY OF PETITION FOR STAY OF COLLECTION OF
PENALTY FOR THE A/Y 2007-08.

EXHIBIT P16(D). TRUE COPY OF PETITION FOR STAY OF COLLECTION OF
PENALTY FOR THE A/Y 2008-09.

EXHIBIT P17. TRUE COPY OF THE PROHIBITORY ORDER DATED 28.06.2014
ISSUED BY THE 2ND RESPONDENT TO THE 4TH RESPONDENT.

EXHIBIT P18. TRUE COPY OF THE LETTER DATED 08.12.2014 ISSUED BY THE
2ND RESPONDENT TO THE 4TH RESPONDENT.

EXHIBIT P18(A). TRUE COPY OF THE PROHIBITORY ORDER DATED 08.12.2014
ISSUED BY THE 2ND RESPONDENT TO THE 7TH RESPONDENT.

EXHIBIT P18(B). TRUE COPY OF THE LETTER DATED 08.12.2014 ISSUED BY
THE 2ND RESPONDENT TO THE 7TH RESPONDENT.

EXHIBIT P19. TRUE COPY OF THE CONDITIONAL ORDER OF STAY DATED
22.12.2014 PASSED BY THE 3RD RESPONDENT.

RESPONDENT(S) ' EXHIBITS NIL

//TRUE COPY//

P.A TO JUDGE

vdv

A.M.SHAFIQUE, J.

W.P.(C) No.775 of 2015

Dated this the 10th day of April, 2015

JUDGMENT

Petitioner challenges Ext.P19, an interim order passed by the Deputy Commissioner(Appeals) II in KVATA Nos.2617/2014, 2618/2014, 2619/2014 and 2620/2014 by which stay has been granted from collection of the disputed amounts from the years 2005-2006, 2006-2007, 2007-2008 and 2008-2009, on condition of the petitioner remitting 50% of the amount demanded for each of the years as per the demand notices dated 30.07.2014 and 31.07.2014 and furnish security for the remaining amount.

2. It is submitted by the learned counsel for the petitioner that the short question involved in the appeal is whether the product concerned is organic manure or not. He relies upon Ext.P7, an order passed by the Tribunal, who considered the issue and passed an order stating that it is an organic manure.

3. Therefore, it is contended that the Appellate Authority has passed a mechanical order without taking into consideration the entire factual aspects involved in the appeal and therefore, the authority has committed serious error of law in directing

payment of 50% of the demand.

3. On the other hand, the learned Special Government Pleader appearing on behalf of the respondents submits that Ext.P7 order is under challenge in the revision filed before this Court. That apart, during the subsequent year the Tribunal has taken a different view. Therefore, that question has not become final and it is for the authority to consider the appeal in accordance with the facts and circumstances made available. Therefore, Ext.P7 by itself cannot be a reason to challenge Ext.P19 order. Further, sufficient security is required when final adjudication is made if the petitioner does not pay the amount.

4. Having regard to the aforesaid submissions and having gone through the orders passed, I am of the view that pending the appeal it may not be proper for the authorities to demand 50% of the amount especially in a case where there is confusion regarding the question as to whether the product is an organic manure or not. The issue had not become final. At least two Tribunals had taken two different views. Under such circumstances it will be proper in the interest of justice to reduce the amount demanded by the Appellate Authority by

reducing the amount to be deposited by 25% instead of 50%. The petitioner has a case that the bank account of the petitioner has been attached as per Exts.P17 to P18(b) orders.

In the result, this writ petition is disposed of as under.

(i) Ext.P19 is modified to the extent of staying further proceedings pursuant to the demands made on condition that the petitioner deposits 25% of the demand and on furnishing security for the balance amount.

The petitioner has a case that the bank account of the petitioner has been attached as per Ext.P17 to P18(b) orders. If the petitioner complies with the directions as stated above, the bank attachment shall be lifted. The payment shall be made within a period of three weeks from the date of receipt of a copy of this judgment.

Sd/-

A.M.SHAFFIQUE, JUDGE

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