

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 8508 of 2012 (K)

PETITIONER(S):

- 1. ALIYAR P.P.,
PALLATHUKADAVIL HOUSE, THURAVUNGARA P.O.,
KANJOOR - 683 575, ERNAKULAM DISTRICT.**
- 2. JAMEELA MOIDEEN,
CHIRAKKAKUDY HOUSE, ALLAPRA P.O.,
PERUMBAVOOR - 683 553, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR**

RESPONDENT(S):

- 1. SPECIAL TAHSILDAR (RR), ALUVA,
ERNAKULAM DISTRICT - 683 101.**
- 2. COMMERCIAL TAX OFFICER,
SECOND CIRCLE, PERUMBAVOOR - 683 542, ERNAKULAM DISTRICT.**
- 3. M/S. MOON TIMBER SUPPLIERS,
PUTHENKUDY BUILDINGS, ALLAPRA. P.O.,
PERUMBAVOOR - 683 553,
REPRESENTED BY ITS MANAGING PARTNER,
SRI.C.M. MUJEEB, RESIDING AT CHIRAKKADUDY HOUSE,
ALLAPRA P.O., PERUMBAVOOR - 683 553.**

R1 & R2 BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-11-2015 ALONG WITH WP(C) 25813/2012 THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 8508 of 2012 (K)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT. P1: COPY OF SECURITY BOND DATED 20-09-2007.

**EXT. P2: COPY OF DEMAND NOTICE DATED 08-02-2012 UNDER THE REVENUE
RECOVERY ACT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No. 8508 of 2012

&

W.P.(C) No. 25813 of 2012

Dated this the 4th day of November 2015

JUDGMENT

Since the issue involved in both these writ petitions is the same, they are taken up for consideration together and disposed by this common judgment.

2. The petitioners in both these writ petitions have stood as guarantors for grant of registration to the 3rd respondent/2nd respondent, under the KVAT Act. It would appear that the 3rd respondent/2nd respondent defaulted in various amounts that were due to the department under the KVAT Act. Consequently, revenue recovery notices were issued to the said respondent, as also to the petitioners, for recovery of exorbitant amounts that were due to the department from the 3rd respondent/2nd respondent in the aforementioned writ petitions. The case of the petitioners in both the writ petitions is that, while standing as guarantors for the liability of the respective respondents to the department, they had limited their liability to an amount of Rs.10,00,000/- (W.P.(C)).

No.8508/2012) and Rs.5,00,000/- (W.P.(C).No.25813/2012), and hence, the revenue recovery proceedings initiated against them could not be for recovery of amounts that exceeded the aforesaid amount of Rs.10,00,000/- / 5,00,000/-. They refer to the security bond that was executed by them while offering themselves as guarantors, the terms of which clearly indicate that their liability was limited to the aforementioned amounts of Rs.10,00,000/- / 5,00,000/-.

3. I have heard the learned counsel appearing for the petitioners and also the learned Government Pleader appearing for the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that the issue involved in these writ petitions has already been decided in favour of the petitioners by the decision of this Court in the judgment in **Shajahan v. District Collector [2009(4) KLT SN 19 (C.No.20)]** as also the judgment dated 05.03.2012 in W.P.(C).No.18526/2009. In the latter case, the Court found that the maximum liability of the petitioner who had executed a security bond to an extent of Rs.3,00,000/- could be nothing more than Rs.3,00,000/- and the petitioner could not be proceeded against for recovery of amounts in

excess of the said amount of Rs.3,00,000/-. Taking cue from the said judgments, I am of the view that in the instance cases also, the liability of the petitioners cannot be said to be for an amount in excess of the amount mentioned in the security bond executed by them before the respondents. It is submitted by counsel for the petitioner that the amount mentioned in the security bond has already been paid to the department by the petitioners in both the writ petitions.

Under the said circumstances, the demand notices impugned in both the writ petitions, namely Ext.P2 demand notice in W.P.(C) No.8508/2012 and Exts.P2 and P3 demand notices in W.P.(C). No.25813/2012 are quashed, and the writ petitions are allowed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/