

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 5172 of 2015 (V)

PETITIONER(S):

**M/S. MBK HEAVY MECHINERY ERECTION CONTRACTORS,
DOOR NO.VII/1160, BROTHERS COMPLEX,
NEAR KANJIKODE RAILWAY STATION, PALAKKAD-678 621,
REP. BY ITS PROPRIETOR, SRI.BEERAN KOYA, AGED 62 YEARS,
S/O.HASSAN, RESIDING AT KOYAMMARAKKAD, KANJIKODE POST,
PALAKKAD.**

**BY ADVS.SRI.SAJEEV KUMAR K.GOPAL
SRI.R.HARISHANKAR**

RESPONDENT(S):

- 1. THE ASSITANT COMMISSIONER OF CENTRAL EXCISE OF SERVICE TAX,
PALAKKAD-1 DIVISION, METTUPALAYAM STREET, PALAKKAD,
PIN-678 001.**
- 2. THE SUPERINTENDENT OF CENTRAL EXCISE,
PALAKKAD I-C-RANGE, PALAKKAD-678 001.**
- 3. M/S.SEPR REFRACTORIES INDIA LIMITED,
IDA, KANJIKODE WEST PO, PALAKKAD,
PIN-678 623.**

R1 & R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 5172 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT P1 : TRUE COPY OF THE ASSESSMENT ORDER NO.01/2014/ST PASSED BY THE
1ST RESPONDENT DATED 10-01-2014.**

EXT P2 : TRUE COPY OF THE NOTICE DATED 12-01-2015.

**EXT P3 : TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONER AGAINST
EXT P1.**

**EXT P4 : TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY IN FILING
THE APPEAL.**

**EXT P5 : TRUE COPY OF THE PETITION FOR WAIVER OF PRE-DEPOSIT AND STAY OF
THE RECOVERY.**

EXT P6 : TRUE COPY OF THE NOTICE DATED 07-02-2015 TO THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms v/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5172 OF 2015

Dated this the 19th day of February, 2015

J U D G M E N T

The petitioner who was an assessee under the Finance Act 1994, as amended, governing the levy of service tax, is aggrieved by Ext.P1 order passed by the 1st respondent. In the writ petition, the petitioner seeks a direction to the Commissioner of Central Excise (Appeals), before whom the petitioner has filed an appeal and stay petition against Ext.P1 order, to consider and pass orders on the stay petition and to keep the recovery steps in abeyance till such time as the Commissioner (Appeals) passes orders in the stay petition.

2. When the matter came up for admission, it was pointed out by the learned counsel for the petitioner that the appeal filed before the Commissioner (Appeals) itself was belated in that, it was filed beyond the condonable period of limitation under the statute. When faced with this situation, the learned counsel for the petitioner would pray for the grant of instalments to discharge the liability consequent to Ext.P1 order passed against him.

3. I have heard Sri.Sajeev Kumar K.Gopal, the learned

counsel for the petitioner and Sri.Thomas Mathew Nellimoottil, the learned Standing counsel for the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and considering the plea of financial hardship urged on behalf of the petitioner, I dispose the writ petition with the following directions:

i. If the petitioner pays the amount confirmed against him by Ext.P1 order, together with interest thereon, in ten equal successive monthly instalments commencing from 10.03.2015, recovery steps for recovery of amounts confirmed against the petitioner by Ext.P1 order shall be kept in abeyance.

ii. It is made clear that if the petitioner commits a default in respect of any of the instalments, he will lose the benefit of this judgment and the respondents will be free to continue the recovery proceedings against him from the stage at which they presently stand.

A.K.JAYASANKARAN NAMBIAR
JUDGE

