

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 5598 of 2015 (Y)

PETITIONER(S):

**M/S.VA TECH WABAG LIMITED,
11, MURRAY'S GATE ROAD,
ALWARPET, CHENNAI - 600 018
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR.GOPALAKRISHNAN.K.M.**

**BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD**

RESPONDENT(S):

**1.DEPUTY COMMISSIONER (APPEALS)
THIRUVANANTHAPURAM - 695 001.**

**2.COMMERCIAL TAX OFFICER (WORKS CONTRACT)
THIRUVANANTHAPURAM - 695 001.**

**3.COMMERCIAL TAX OFFICER (WORKS CONTRACT)
COMMERCIAL TAXES, TAX TOWER, II FLOOR,
KARAMANA, THIRUVANANTHAPURAM - 695 002.**

**4.CHIEF ENGINEER, JBIC
KERALA WATER AUTHORITY,
VELLAYAMBALAM, THIRUVANANTHAPURAM - 695 033.**

**5.TRAVANCORE TITANIUM PRODUCTS LIMITED
THIRUVANANTHAPURAM - 695 021.**

**R BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR
R BY SRI.JOSEPH JOHN, SC, KERALA WATER AUTHORITY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ASSESSMENT ORDER FOR THE ASSESSMENT YEAR 2010-11 DATED 28.12.2013.

EXT.P2: COPY OF THE ASSESSMENT ORDER FOR THE ASSESSMENT YEAR 2011-12, DATED 29.1.2014.

EXT.P3: COPY OF THE MEMORANDUM OF APPEAL FOR THE ASSESSMENT YEAR 2010-11 DATED 5.3.2014.

EXT.P4: COPY OF THE MEMORANDUM OF APPEAL FOR THE ASSESSMENT YEAR 2011-12 DATED NIL.

EXT.P5: COPY OF THE WRITTEN SUBMISSIONS FILED BY THE PETITIONER FOR THE ASSESSMENT YEARS 2010-11 AND 2011-12 DATED NIL.

EXT.P6: COPY OF THE APPELLATE ORDER PERTAINING TO THE ASSESSMENT YEAR 2010-11 DATED 1.12.2014.

EXT.P7: COPY OF THE APPELLATE ORDER PERTAINING TO THE ASSESSMENT YEAR 2011-12 DATED 1.12.2014.

EXT.P8: COPY OF THE APPLICATIONS FOR RECTIFICATION FOR ASSESSMENT YEAR 2010-11 DATED NIL.

EXT.P9: COPY OF THE APPLICATIONS FOR RECTIFICATION FOR ASSESSMENT YEAR 2011-12 DATED NIL.

EXT.P10: COPY OF THE NOTICE DATED 6.2.2015 ISSUED TO THE 4TH RESPONDENT.

EXT.P11: COPY OF THE NOTICE DATED 6.2.2015 ISSUED TO THE 5TH RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5598 OF 2015 (Y)

Dated this the 23rd day of February, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P6 and P7 appellate orders passed for the assessment years 2010-11 and 2011-12, under the KVAT Act. The case of the petitioner is that, while in the appeals preferred against Exts.P1 and P2 assessment orders, the petitioner had produced the necessary materials, including copies of 'C' Forms, that established that the findings in the assessment orders were factually incorrect, and further had brought the facts and material to the notice of the Appellate authority, in Exts.P6 and P7 appellate orders, there is no specific reference to the material that was produced by the petitioner before the Appellate authority. In Exts.P6 and P7, substantial portions of the order are seen to be mere replication of the findings of the Assessing officer in Exts.P1 and P2 orders. While Exts.P8 and P9 rectification applications have been preferred by the petitioner, seeking a rectification of the appellate orders, the petitioner has preferred the writ petition essentially being aggrieved by the manner in which the Appellate authority has passed Exts.P6 and P7 appellate orders.

2. I have heard Sri.A.Kumar, the learned counsel appearing for the petitioner and also Sri.Sudheesh Kumar.S., the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Exts.P6 and P7 appellate orders, the 1st respondent Appellate authority has virtually endorsed the findings of the Assessing authority and not given any finding with regard to the material that was produced before her by the petitioner. In my view, the 1st respondent Appellate authority, while considering the appeals against Exts.P1 and P2 orders of assessment, has failed to take note of the material produced by the assessee to substantiate his contentions on merits. Appellate proceedings being a continuation of the original proceedings, It would be incumbent upon an appellate authority to advert to these materials, and render an independent finding as to the relevance of the said materials and the effect it would have on the contentions of the assessee. In Exts.P6 and P7 appellate orders, I do not find this exercise having been done by the 1st respondent and hence, I am of the view that Exts.P6 and P7 appellate orders are vitiated by a patent non-application of the mind of the appellate authority. Accordingly, I

quash Exts.P6 and P7 appellate orders, and direct the 1st respondent to pass fresh orders in the appeals preferred by the petitioner against Exts.P1 and P2 orders. I make it clear that while passing fresh orders as directed, the 1st respondent appellate authority shall specifically advert to the materials produced by the petitioner and give reasons for the decision arrived at by her. The 1st respondent shall pass orders, as directed, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. The petitioner shall appear before the 1st respondent at 11.00 a.m. on 27.2.2015, for this purpose. I make it clear that recovery proceedings, if any, including further proceedings pursuant to Exts.P10 and P11 notices, for recovery of the amounts confirmed against the petitioner by Exts.P1 and P2 orders, shall be kept in abeyance till such time as orders are passed by the 1st respondent, and communicated to the petitioner.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp