

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 5623 of 2015 (C)

PETITIONER(S) :

**POLY BLACK PRETREADS,
FUNCTIONAL INDUSTRIAL ESTATE, PAYYANAD P.O., MANJERI,
MALAPPURAM DISTRICT, REPRESENTED BY MANAGING PARTNER,
K.P.KUNHIKOYA, S/O.K.P.HAMEED, VADAKKEYIL HOUSE,
KARIPOOR P.O., MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SRI.K.RAKESH**

RESPONDENT(S) :

- 1. THE DEPUTY DIRECTOR (EXCISE DUTY),
RUBBER BOARD, GOVERNMENT OF INDIA,
MINISTRY OF COMMERCE AND INDUSTRY, SUB JAIL ROAD,
KOTTAYAM, PIN- 686 002.**
- 2. THE INSPECTOR (EXCISE DUTY),
RUBBER BOARD REGIONAL OFFICE, KOZHIKODE, PIN- 673 001.**

BY ADV. SRI.V.ABRAHAM MARKOS

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- P1A TO P1(C): TRUE COPIES OF TAX INVOICES DATED 11-02-2009 AND
 10-02-2009.**
- P2: TRUE COPY OF THE CHEQUE SHOWING PAYMENT MADE TO
 THE SECRETARY, RUBBER BOARD, KOTTAYAM DATED 01-09-2014.**
- P3: TRUE COPY OF THE LETTER DATED 03-07-2014 SENT BY THE FIRST
 RESPONDENT TO THE PETITIONER.**
- P4: TRUE COPY OF THE LETTER DATED 26/08/2014 ISSUED BY THE PETITIONER
 TO THE FIRST RESPONDENT.**
- P5: TRUE COPY OF THE LETTER DATED 26/09/2014 ISSUED TO THE PETITIONER
 BY THE FIRST RESPONDENT.**
- P6: TRUE COPY OF THE LETTER DATED 09/01/2015 ISSUED BY THE PETITIONER
 BY THE FIRST RESPONDENT AS REF. NO.RBED/4/86/2014.**
- P7: TRUE COPY OF THE ENVELOPE IN WHICH EXHIBIT P6 LETTER WAS SENT BY
 THE FIRST RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

=====

W.P.(C). No. 5623 of 2015

Dated this the 24th day of February, 2015

JUDGMENT

The petitioner with intent to start a re-treading unit dealing with rubber in the Industrial Estate at Payyanad, Manjeri, purchased machinery from the Travancore Pretreads (P) Ltd, who was running the unit elsewhere. On submitting necessary application before the Rubber Board in this regard, so as to obtain necessary licence from the said authority, the petitioner was let known vide Ext.P3 dated 3.7.2014 issued by the 1st respondent to furnish sufficient documents to prove possession over the factory premises and such other details. The petitioner was also required to furnish copies of machinery and bill to substantiate the establishment of the unit and further to make arrangements with M/s Travancore Pretreads (P) Ltd to remit the pending cess amount of ₹17,948/- with interest.

2. On receipt of Ext.P3, the petitioner submitted Ext.P4 reply dated 26.8.2014. This was followed by Ext.P5 communication dated 26.9.2014 issued by the 1st respondent,

referring to the non compliance of the requirements, mainly with regard to the satisfaction of cess as above, by the Travancore Pretreads (P) Ltd, whose machinery was purchased by the petitioner for installation of the unit. The case of the petitioner is that, there is absolutely no rhyme or reason on the part of the 1st respondent in requiring the petitioner to satisfy the liability of somebody else, merely for the reason that the petitioner purchased the machinery from the said establishment. It is in the said circumstance, that the challenge has been raised, also seeking to set aside Ext.P6 dated 9.1.2015 issued by the 1st respondent insisting to satisfy a sum of ₹17,948 with interest payable by M/s Travancore Pretreads (P) Ltd, or to submit reply, if any within 15 days as mentioned therein.

3. Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the respondents.

4. During the course of hearing, it is brought to the notice of this Court by the learned counsel for the petitioner that the date shown in Ext.P6 as '9.1.2014' is only a typographical error and that the same presumably must be '9.1.2015' and further that the same was served to the petitioner only on 29.1.2015, as evident from the endorsement of the postal cover, a copy of

which has been produced as Ext.P7.

5. The learned Standing Counsel for the Rubber Board submits that the idea and understanding of the petitioner is thoroughly wrong and misconceived. Reference is made to Rule 40 of the Rubber Rules, 1955 formulated under the Rubber Act, 1947. The said rule reads as follows:

"40. Licence to acquire rubber

Any manufacturer desiring a special licence to purchase or otherwise acquire rubber (including imported natural rubber) shall apply to the Board in Form D. If the Board approves, a licence may be issued in Form E."

6. Form D mentioned thereunder also contains the following stipulations:

"NOTE:

(1) If the applicant as Proprietor or Partner of any unit holding a licence issued by the Board defaulted submission of any return prescribed under the Act/Rules or payment of any cess dues to the Board, issue of licence to such application will be considered only after submission of all the pending returns and payment of all the outstanding dues.

(2) If the application is for a licence to a unit setup fully or partially with machinery purchased from any other unit which is or was holding a licence issued by the Board and if such the licensee is a defaulter of any return or cess, issue of licence will be considered only after clearance of all the outstanding dues in the name of the previous

owner.

(3) in the case of new application, issue of licence will be subject to fulfilment of the following additional conditions:

(a) the unit should be ready for commencement of production at the time of issue of licence.

(b) furnish photo copy of the following documents:

(i) Small scale industries or Sales Tax or Value Added Tax Registration Certificate or licence issued by the Panchayat or Municipal or Corporation authorities to establish the industry at the proposed premises.

(ii) Sanction letter for power connection, if power connection is yet to be received.

(iii) Partnership deed in the case of a partnership firm and certificate issued by the Registrar of Firms, if the partnership is registered.

(iv) Memorandum and Articles of Association and Certificate of Incorporation issued by the Registrar of Companies in the case of Private Limited Companies or Limited Companies.

Copy of the Bye-laws in the case of Co-operative Societies.

(v) Purchase bills in respect of the machinery installed.

(vi) Documents to prove the right of ownership/possession of office and factory premises."

The learned Standing Counsel points out that, by virtue of the

mandate under **Note (2)**, if the machinery is purchased by the concerned party who is intending to set up the unit, from any other unit, which is or was holding a licence issued by the Board, the liability, if any, of the said licensee has to be cleared as a pre-requirement, to consider the application for licence submitted by the new party. It is in the above circumstance, that the petitioner is being repeatedly alerted as to the necessity to satisfy the outstanding cess to be cleared by M/s. Travancore Pretreads (P) Ltd. Admittedly, no arrangement has been made by the petitioner to cause the due amount to be cleared. In the said circumstance, the proceedings issued by the 1st respondent are perfectly within the four walls of law and is not assailable under any circumstance, submits the learned counsel.

7. The learned counsel for the petitioner submits that, in view of the turn of events with reference to the Rule position as above, the petitioner is ready to satisfy the outstanding liability towards cess from Travancore Pretreads (P) Ltd, with interest and would like to proceed against the said establishment/defaulters. This Court does not intend to express anything in this regard, in so far as the alleged defaulter, i.e., Travancore Pretreads (P) Ltd is not made a party in the present writ petition. The petitioner is

set at liberty to satisfy the amount demanded as per Ext.P6 with interest, upon which the application preferred by the petitioner for granting the licence shall be considered and appropriate orders shall be passed in accordance with law, at the earliest, at any rate, within 'one month' from the date of satisfaction of the due amount as above.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps. The writ petition is disposed of.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE.

kp/-