IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 5881 of 2015 (I)

PETITIONER :

SHAFEER U.H., AGED 35 YEARS
M/S. NAFEESA WOOD PRODUCTS, III/298-A
VENGOLA P.O. ARAKKAPADY, PERUMABVOOR
ERNAKULAM - 683 554.

BY ADVS.SRI.P.N.DAMODARAN NAMBOODIRI
SMT.K.P.RANI

RESPONDENTS :
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1. THE TAHSILDAR, TALUK OFFICE, KUNNATHUNAD,
PERUMABVOOR -683 547.

2. THE COMMERCIAL TAX OFFICER,
IIND CIRCLE, COMMERCIAL TAXES, PERUMBAVOOR - 683 547.

3. THE INTELLIGENCE OFFICER,
SQUAD NO. V, DEPARTMENT OF COMMERCIAL TAXES,
MATTANCHERY AT KARUKUTTY.

4. THE SECRETARY,
VAT APPELLATE TRIBUNAL, ERNAKULAM - 682 015.

5. THE ASSISTANT COMMISSIONER (APPEALS)
DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM - 682 015.

R1 TO R5 BY SENIOR GOVERNMENT PLEADER
SMT. SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No.5881 of 2015 (I)

...

Dated this the 18th day of March, 2015

JUDGMENT

The petitioner had approached this Court challenging Exts.P16 and P17 revenue recovery proceedings, that were initiated against him, and the property that he had sold to third persons, for recovery of tax and penalty dues, pursuant to orders that were passed against him for the assessment years 2009 - 2010 and 2011 - 2012 under the Kerala Value Added Tax Act, 2003.

2. It is pointed out that, against the penalty order passed for the year 2009 - 2010, the petitioner had already approached the first appellate authority, who dismissed the appeal. Thereafter, the petitioner preferred a second appeal before the Appellate Tribunal, and the Appellate Tribunal has granted a conditional stay of recovery of the penalty amounts pending disposal of the said appeal. The said appeal is stated to be pending even now before the Appellate Tribunal.

3. As regards the amounts confirmed against the petitioner in the assessment order for the year 2009 - 2010, the petitioner had preferred an appeal and stay petition before the first appellate authority and immediately thereafter approached this Court for a direction to the appellate authority to consider the stay petition

preferred by the petitioner. By Ext.P7 judgment, this Court disposed the writ petition, directing the first appellate authority to consider and pass orders in the stay petition, and directing that, recovery steps for recovery of the amounts confirmed against the petitioner by the assessment orders for the year 2009 - 2010 be kept in abeyance till such time as orders are passed in the stay petition.

4. The learned counsel for the petitioner submits that, pursuant to the judgment of this Court, the appellate authority has not considered the stay petition till date and hence the stay against the recovery, granted by this Court through Ext.P7 judgment, continues to be in operation even today.

5. Regarding the assessment order for the year 2011 - 2012, where a demand of Rs.2,23,593/- was confirmed against the petitioner, and against which he had approached the Government seeking for an installment facility to pay the said tax amount, consequent to Ext.P10 stay order obtained from the Government, the petitioner has paid an amount of Rs.83,177/-. Thereafter, when he could not comply with the conditions imposed by the Government in Ext.P10 stay order, he approached this Court with the present writ petition. By an interim order dated 24.02.2015, this Court had stayed further proceedings for

recovery, on condition that the petitioner paid an amount of Rs.1,40,000/- on or before 10.03.2015.

6. It is now submitted by the learned counsel for the petitioner that, the petitioner has paid the said amount of Rs.1,40,000/- as per the directions of this Court. It is clear, therefore, that on the payment of the aforesaid amount, the petitioner has effectually discharged his liability with regard to the assessment for the year 2011 - 2012. It is also clear, therefore, that the recovery proceedings initiated through Exts.P16 and P17 cannot be maintained against the petitioner for the assessment year 2011 - 2012. Inasmuch as the challenge in the present writ petition is only with regard to the recovery proceedings initiated against the petitioner for recovery of the dues confirmed for the assessment year 2011 - 2012, and the said dues have already been paid by the petitioner, partly pursuant to Ext.P10 order passed by the Government ,and partly pursuant to the interim order granted by this Court, the present writ petition in its challenge against the recovery proceedings for the assessment year 2011 - 2012 has become infructuous.

Thus, leaving it open to the respondents to proceed with the recovery steps pursuant to Exts.P16 and P17 notices, for recovery of amounts due in respect of the assessment year 2009 -

2010, if and when the cause of action arises, the present writ petition in its challenge against the recovery for the assessment year 2011 - 2012 is closed as infructuous.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/18/03/