

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 7054 of 2015 (F)

PETITIONER(S):

**DEVAMATHA ROCK PRODUCTS,
ODAKKALY, ASAMANNOR (P.O.), PERUMBAVOOR,
ERNAKULAM (DT), (REPRESENTED BY N.D.JOSEPH, PARTNER)**

**BY ADVS.SRI.K.N.SREEKUMARAN
SRI.P.D.UNNIKKANNAN NAIR**

RESPONDENT(S):

- 1. INTELLIGENCE OFFICER,
COMMERCIAL TAXES, SQUAD NO.V,
MATTANCHERRY AT PERUMBAVOOR - 683 542.**
- 2. DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MATTANCHERRY - 682 002.**
- 3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, MUVATTUPUZHA - 683 572.**
- 4. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT P1 : TRUE COPY OF THE SHOP INSPECTION REPORTS BEARING NOS.180615
AND 180616 DT. 25.1.2014.**

**EXT P2 : TRUE COPY LETTER DATED 27.1.2014 ISSUED BY ASST. EXECUTIVE
ENGINEER, KSEB, KURUPPAMPADDY.**

**EXT P3 : TRUE COPY OF THE PENALTY ORDER ATED 20.11.2014 ISSUED BY THE
1ST RESPONDENT.**

**EXT P4 : TRUE COPY OF THE APPEAL PETITION AGAINST EXT P3 FILED BY
PETITIONER BEFORE 2ND RESPONDENT ON 31.12.2014.**

**EXT P4(A) : TRUE COPY OF THE STAY APPLICATION FILED IN EXT P4 REVISION
ON 31.12.2014.**

**EXT P4(B) : TRUE COPY OF THE EARLY HEARING APPLICATION FILED IN EXT P7
REVISION ON 3.6.2014.**

**EXT P5 : TRUE COPY OF THE DEMAND NOTICE RRC 471/14-15 DATED 30-12-2014
ISSUED BY THE 3RD RESPONDENT.**

**EXT P6 : TRUE COPY LETTER DATED 1.12.2014 ISSUED BY ASST. EXECUTIVE
ENGINEER, KSEB, KURUPPAMPADY.**

**EXT P7 : TRUE COPY OF THE STAY ORDER DATED 16.1.2015 IN KVAT RP NO.188/2014
ISSUED BY 2ND RESPONDENT.**

**EXT P8 : TRUE COPY OF THE MEDICAL CERTIFICATE DT 26.2.2015 ISSUED BY
DOCTOR S.SURESH, SPINE SURGEON, LAKESHORE HOSPITAL,
ERNAKULAM.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.7054 OF 2015 (F)

Dated this the 5th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P7 conditional order of stay passed by the 2nd respondent in a revision filed by the petitioner against an order confirming a penalty on him. The contention of the petitioner in the writ petition is that Ext.P7 order of stay has been passed without adverting to the contentions of the petitioner in the appeal and the stay petition, and further has been passed in a mechanical manner without furnishing any reasons for the directions therein to make a deposit of 30% of the penalty amount demanded from the petitioner as a condition for the grant of stay of recovery of the balance amounts pending disposal of the revision.

2. I have heard Sri.K.N.Sreekumaran, the learned counsel appearing for the petitioner as also Sri.Sudheesh Kumar, 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 Ext.P7

order, the 2nd respondent has, after recording the submissions of the petitioner, considered the contentions urged and found that the contention of the petitioner, with regard to the non-working of a stone crushing machine for a substantial part of the year in which he had opted for payment of tax on compounded rates, could not be entertained. It was thereafter that the 2nd respondent found that, the interests of justice required the petitioner to pay 30% of the amount demanded by the order of penalty confirmed against him, as a condition for the grant of stay of recovery of the balance amounts. On a perusal of Ext.P7 order, I do not see any irregularity or illegality in the exercise of discretion by the 2nd respondent. Resultantly, the writ petition, in its challenge against Ext.P7 order fails, and is accordingly dismissed.

Counsel for the petitioner would submit that by Ext.P7 order, he has been given only three weeks time to comply with the requirement of paying 30% of the amount of Rs.49,20,000/- that was imposed on him by way of penalty. Taking into account the plea of financial hardship urged on behalf of the petitioner, I direct that, if the petitioner pays the amount of demanded in Ext.P7 order, on or before

28.3.2015, then the said payment shall be treated as compliance with the requirements of pre-deposit in Ext.P7 order.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp