

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 7828 of 2015 (C)

PETITIONER(S):

**HEERA EDUCATIONAL AND CHARITABLE TRUST,
CITADEL, TC 5/2353-7, GOLFINKS ROAD
KOWDIAR P.O., THIRUVANANTHAPURAM-695 003,
REPRESENTED BY ITS MANAGING TRUSTEE.**

**BY ADVS.SMT.A.K.PREETHA
SRI.ANIL NARAYANAN**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF LABOUR AND REHABILITATION, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. THE ASSESSING AUTHORITY UNDER THE BUILDING AND OTHER
CONSTRUCTION WORKERS WELFARE CESS ACT
DISTRICT LABOUR OFFICE, THOZHIL BHAVAN
THIRUVANANTHAPURAM-695 033.**

BY GOVERNMENT PLEADER SRI.R.RENJITH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF FORM I SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- P2 : COPY OF THE PROVISIONAL ORDER SERVED ON THE PETITIONER DTD.6.3.2013.**
- P3 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DTD.18.3.2012.**
- P4 : COPY OF THE FINAL ASSESSMENT ORDER PASSED BY THE 2ND RESPONDENT DTD.18.4.2013.**
- P5 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DTD.3.9.2013.**
- P6 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DTD.4.9.2013.**
- P7 : COPY OF THE RECEIPT.**
- P8 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DTD.22.9.2014.**
- P9 : COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DTD.6.2.2015 TO THE PETITIONER ALONG WITH THE POSTAL COVER.**
- P10 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DTD.18.2.2015.**
- P11 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.**
- P12 : COPY OF THE EMAIL COMMUNICATION FROM THE PETITIONER'S BANKERS DTD.13.2.2015.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. Vinod Chandran, J.

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W.P.(C)No.7828 of 2015

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Dated this the 12th day of March, 2015.

JUDGMENT

1. The petitioner is aggrieved by Ext.P4 order passed by the second respondent, assessing the petitioner under the Building and Other Construction Workers Welfare Cess Act, 1996 for a sum of Rs.20,44,460/-. It is submitted that the petitioner had paid Rs.13,00,000/- as part payment. Petitioner sought for instalment facility to pay the balance amount, before the second respondent, which was rejected by Ext.P9. The petitioner is before this Court, challenging the penalty proceedings initiated against him.
2. Considering the confined prayer made for instalments, it is directed that the penalty proceedings shall be kept in abeyance on condition of the petitioner approaching the authority within a period of one week. On approaching the authority, the petitioner shall be granted the facility to pay the balance amount in ten equal monthly

instalments. The authority shall compute the amounts due as on 31.3.2015 and issue a statement of accounts, in accordance with which the instalments shall be paid. The 1st instalment shall be paid on or before 30.4.2015 and thereafter; the due date of instalments falling on the 30th of each succeeding month. If default is committed in one instalment, then the recovery proceedings shall revive and continue. On the satisfaction of the dues as per the statement, the authority shall give a statement of the future interest from 30.4.2015 and the same shall be settled as the 11th instalment.

3. The penalty proceedings under Section 12 of the Act is for wilful default of the payment of cess. Admittedly, even now the cess amounts have not been fully paid and it is for the authority to consider the imposition of penalty in accordance with Section 12. This Court has merely granted the instalment to facilitate satisfaction of the dues under the Act. Penalty proceedings shall be kept in abeyance while the instalments are paid. After full satisfaction or on

default, the penalty proceedings shall be revived and the authority, in such circumstance, shall not consider the period of instalment granted by this Court for imposition of penalty. The default in non-payment for the prior period shall be considered after hearing the petitioner's explanation.

The writ petition stands disposed of as above. No costs.

K. Vinod Chandran, Judge.

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