

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 9050 of 2015 (E)

PETITIONER(S):

**IDEA CELLULAR LTD.,
V.J. TOWER, VYTTILA P.O., ERNAKULAM - 682 019,
REPRESENTED BY ITS ASSISTANT GENERAL MANAGER -
(LEGAL AND REGULATORY) SRI.RAJKUMAR PAVOTHIL.**

BY ADV. SRI.J.KRISHNAKUMAR (ADOOR).

RESPONDENT(S):

- 1. THE COMMISSIONER,
COMMERCIAL TAXES DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM-695 001.**
- 2. THE INQUIRY OFFICER,
OFFICE OF THE DEPUTY COMMISSIONER (INT),
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM -682 018.**
- 3. IDBI BANK LIMITED,
BRANCH, IDBI TOWER, 3RD FLOOR,
WTC COMPLEX, CUFFE PARADE, MUMBAI - 400 005.**

R1 & R2 BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT-P1- TRUE COPY OF THE MANUAL FORM 15 DELIVERY NOTE, CTVAG-H 0915360 DATED 26/04/2014.
- EXHIBIT-P1(A)- TRUE COPY OF THE MANUAL FORM 15 DELIVERY NOTE, CTVAG-H 0915361 DATED 26/04/2014.
- EXHIBIT-P2- TRUE COPY OF THE ELECTRONIC FORM NO. 15 DELIVERY NOTE, DATED 26/04/2014.
- EXHIBIT-P2(A)- TRUE COPY OF THE ELECTRONIC FORM NO. 15 DELIVERY NOTE, DATED 26/04/2014.
- EXHIBIT-P3- TRUE COPY OF THE BANK GUARANTEE NO. 1401261BGF00143 OF IDBI BANK LIMITED, ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT-P4- TRUE COPY OF THE INTIMATION DATED 03/03/2015 ISSUED BY THE 2ND RESPONDENT TO TE 3RD RESPONDENT.
- EXHIBIT-P5- TRUE COPY OF THE PROCEEDINGS NO. EO/OR 702/14-15 DATED 16/02/2015 OF THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 9050 of 2015
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Dated this the 27th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 order of penalty, that was imposed on the petitioner by the 2nd respondent. The case of the petitioner is that before passing Ext.P5 order, he was not served with any notice and further he was not afforded an opportunity of hearing before the 2nd respondent. It is his contention, therefore, that the said order was passed in violation of the rules of natural justice and further, immediately thereafter, the respondents issued a notice to the 3rd respondent bank invoking the bank guarantee, that was furnished by the petitioner towards security at the time of detention of the goods.

2. I have heard the learned counsel appearing for the petitioner and the learned Government Pleader for the respondents as well.

3. On a consideration of the facts and circumstances of the case and the submissions made across, and in particular the submission of the learned Government Pleader on instructions, that the notice dated 27.01.2015 proposing the imposition of penalty was actually served on the petitioner on 31.1.2015, which fact is

evidenced by the acknowledgment on the notice, which shows that the petitioner did receive the notice, Ext.P5 order cannot be said to be one that was passed in violation of the rules of natural justice. The petitioner having received the notice on 31.01.2015, had ample time to respond to the said notice, or approach the 2nd respondent with a request for adjournment before 16.02.2015, on which day Ext.P5 order was passed, confirming the penalty on him. Thus, I am of the view that the petitioner has necessarily to invoke the alternate remedy against Ext.P5, by way of filing an appeal against Ext.P5 order to the appellate authority under the KVAT Act. The apprehension of the petitioner, however, is that pending the filing of an appeal before the appellate authority, the respondents may act on Ext.P4 notice, and invoke the bank guarantee. To safeguard the interest of the petitioner, pending such time as he takes to approach the appellate authority, in a challenge against Ext.P5 order, I dispose the writ petition with the following directions:

- (i) If the petitioner prefers an appeal against Ext.P5 order within a period of three weeks from the date of receipt of a copy of this judgment, then the appellate authority shall consider the stay petition preferred along with the appeal, within a

period of two months thereafter, after hearing the petitioner.

(ii) Pending consideration of the stay application by the appellate authority as directed, and orders being communicated to the petitioner, further steps pursuant to Ext.P4 for recovery of the bank guarantee, furnished by the petitioner shall be kept in abeyance.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE