

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 10223 of 2015 (C)

PETITIONER(S):

**M/S.CERAMIC WORLD
KOTHAD, SOUTH CHITTOOR, ERNAKULAM,
REPRESENTED BY ITS MANAGING PARTNER MS.SELIN M.T.**

**BY ADVS.SRI.SHINU J.PILLAI
SMT.S.SUJA
SRI.SACHIN JOSEPH
SRI.S.ABHILASH VISHNU**

RESPONDENT(S):

**1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-1 695 001.**

**2.THE COMMERCIAL TAX OFFICER-II,
KALAMASSERRY, ERNAKULAM.**

**3.THE DEPUTY COMMISSIONER APPEALS,
COMMERCIAL TAXES, ERNAKULAM, KOCHI 682 015.**

**4.THE ASSISTANT COMMISSIONER (APPEALS),
OFFICE OF THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM, KOCHI - 682 015.**

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF BEST JUDGMENT ORDERS NOS.32071202122/6 TO 9 DATED 22.1.14 ALONG WITH ORDER NO.32071202122/10/2014-15 DATED 20.12.14 OF THE COMMERCIAL TAX OFFICER, 1ST CIRCLE, KALAMASSERY.

EXT.P2: COPY OF TAX PAYMENT CHALLANS

EXT.P3: COPY OF APPEAL NO.307/2015.

EXT.P4: COPY OF COMMON ORDER PASSED BY THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM IN R.P.NO.82,83,84 AND 85 OF 2015 DATED 19.2.2015.

EXT.P5: COPY OF ORDER IN KVATA NOS.307, 308, 309, 310 AND 311 OF 2015 DATED 28.2.2015.

EXT.P6: COPY OF G.O.(P).NO.105/2014/TD S.R.O.NO.414/2014 DATED 10.7.14 OF THE GOVERNMENT OF KERALA.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10223 OF 2015 (C)

Dated this the 30th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 conditional order of stay passed by the 4th respondent, in a stay petition filed along with the appeal filed against Ext.P1 assessment order. The challenge in the writ petition against Ext.P5 order is essentially that while passing the said order, the 4th respondent had not exercised his discretion validly.

2. I have heard the learned counsel appearing for the petitioner as also 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.P5 order, the 4th respondent has considered the case of the petitioner, vis-a-vis the orders passed against him by the assessing authority. It is thereafter, and after noting that the petitioner had not complied

with the requirement of paying a penalty as contemplated under Section 22 (5) of the KVAT Act, that the 4th respondent found that the petitioner was entitled only to a conditional stay against recovery of the amounts confirmed against him by Ext.P1 order. I find however that the petitioner has already paid the penalty amounts that were confirmed against him by the assessing authority, as modified by the first revisional authority. In that view of the matter, the non-compliance with the requirement of payment of penalty under Section 22 (5) may not justify the demand of the exorbitant amount of 30% of the outstanding demand from the petitioner, as a condition for grant of stay pending disposal of the appeal. I therefore feel that the interests of justice would be met by reducing the amount, directed to be paid in Ext.P5, to 15% of the outstanding demand of Rs.43,84,130/-. Thus, if the petitioner pays 15% of the outstanding demand of Rs.43,84,130/- and complies with the other requirements in Ext.P5 order of the 4th respondent, on or before 20.04.2015, then the same shall be treated as compliance with the said order, and the 4th respondent will proceed to hear the appeals preferred by the petitioner against Ext.P1 order within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

Save for this limited modification, the writ petition, in its challenge against Ext.P5 order, is otherwise dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp