IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

WP(C).No. 11616 of 2015 (B)

PETITIONER :

MOHAMMED ASHRAF A. M., AGED 46 YEARS,
ANANDA MANGALATH, MOONAMPADI,
TRIPPANACHI, MALAPPURAM

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENTS :
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1. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   OFFICE OF THE COMMISSIONER OF COMMERCIAL
   TAXES, THIRUVANANTHAPURAM 695 001.

2. **THE COMMERCIAL TAX OFFICER,**
   (WORKS CONTRACT-I),
   COMMERCIAL TAXES OFFICE, MALAPPURAM - 676 001.

R1 & R2 BY GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 11616 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: A TRUE COPY OF THE ORDER DATED 8.8.2014 ISSUED BY THE 2ND RESPONDENT REJECTING THE COMPOUNDING APPLICATION.

EXT.P2: A TRUE COPY OF THE CIRCULAR NO.11 OF 2013 DATED 3.7.2013 ISSUED BY THE 1ST RESPONDENT COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

EXT.P3: A TRUE COPY OF THE APPLICATION FOR CONDONING DELAY SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 8.8.2014

EXT.P4: A TRUE COPY OF THE ORDER DATED 26.12.2014 PASSED BY THE 1ST RESPONDENT REJECTING THE DELAY CONDONATION APPLICATION SUBMITTED BY THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 11616 of 2015

Dated this the 17th day of August, 2015

JUDGMENT

The petitioner is a works contractor opted for a compounding by submitting an application on 17.03.2014. The Assessing Authority rejected the application on 08.08.2014 stating that application ought to have been filed on or before 31.07.2013.

2. The petitioner challenging that the order of the Assessing Authority approached the Commissioner. The Commissioner has the power to condone delay under Section 20(a).

3. The Commissioner, however, rejected the application states that he can exercise the power only upto filing of the return which fell on 30.04.2014, and cannot condone delay after 30.04.2014.

4. There can’t be any dispute now, to the fact that the petitioner has filed an application on 17.03.2014. As far as for exercising power by the Commissioner, the same can be considered within time. However, the petitioner can only approach the Commissioner when the Assessing Authority

rejects the application. The application was rejected by the assessing authority on 08.08.2014. All complications arose in the matter is on account of the fact that the Assessing Authority rejected the application only after the date of filing return. The Commissioner felt that in such circumstances even if he exercises the power, he cannot condone the delay beyond filing of return.

I am of the view that the matter requires reconsideration. The petitioner, in fact, filed the application within time. The power to exercise condonation vested with the Commissioner would arise only when the Assessing Authority rejects the order. Therefore, necessarily, the petitioner can only approach the Commissioner only after 08.08.2014. Therefore, fresh order shall be passed after adverting to the above aspect, taking into account of the date of order of the Assessing Authority within a period of two months after notice to the petitioner.

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

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

bpr