IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 23197 of 2007 (J)

---

PETITIONER(S):

M.M. SHAIJO,
PROPRIETOR, MANGALY ROCK PRODUCTS, AMALAPURAM,
AYYAMPUZHA P.O., PIN - 683 581.

BY ADVS.SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENT(S):

1. COMMERCIAL TAX OFFICER, ANGAMALY.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

**WP(C).No. 23197 of 2007 (J)**
**-------------------------------------**

**APPENDIX**

**PETITIONER(S)' EXHIBITS:**
**------------------------------------**

**EXT.P1: TRUE COPY OF THE INVOICE NO.4 DTD.29.12.2006 IN RESPECT OF PURCHASE OF MACHINERY BY THE PETITIONER.**

**EXT.P2: TRUE COPY OF THE ORDER NO.A2-309/06 DTD.2.1.2007 ISSUED BY THE SECRETARY, AYYAMPUZHA GRAMA PANCHAYATH GRANTING SANCTION FOR CONSTRUCTION OF BUILDING AND INSTALLATION OF ADDITIONAL CAPACITY OF 50 HP.**

**EXT.P3: TRUE COPY OF THE CERTIFICATE NO.A/16/2007 DTD.6.1.2007 ISSUED BY THE ASST. DISTRICT INDUSTRIES OFFICER, ALUVA.**

**EXT.P4: TRUE COPY OF THE PROCEEDINGS FOR ALLOCATION OF POWER ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER, READING DB4/06-07/MJA/8/17.1.2007.**

**EXT.P5: TRUE COPY OF THE INTERIM RECEIPT NO.12 DTD.12.6.2007 ISSUED BY THE KSEB.**

**EXT.P6: TRUE COPY F THE FORM 1D OPTION DTD.10.7.2007 SUBMITTED BY THE PETITIONER.**

**EXT.P7: TRUE COPY OF THE ORDER IN FORM 4D NO.TIN:32150822512/07-08 DTD.12.7.2007 ALONG WITH DEMAND NOTICE IN FORM 12 ISSUED BY THE 1ST RESPONDENT.**

**EXT.P8: TRUE COPY OF THE JUDGMENT DTD.19.7.2007 OF THIS HONOURABLE COURT IN WP(C) NO.22216/2007 (T).**

**RESPONDENT(S)' EXHIBITS:**
**---------------------------------------**

**NIL**

**//TRUE COPY//**

**P.S.TO JUDGE**

Ms**v/**

**A. MUHAMED MUSTAQUE, J.**

**-------------------------------------------**

**W.P.(C). No. 23197 of 2007**

**------------------------------------------**

**Dated this the 30th day of June, 2015**

**J U D G M E N T**

The petitioner approached this Court challenging Ext.P7 order. As per Ext.P7, the petitioner has been directed to pay Rs.1,35,000/- being compounding tax in respect of the period from 01.04.2007 to 30.03.2008 under Section 8 of the KVAT Act, 2003.

2. The petitioner's case is that, 01.04.2007 to 30.06.2007, he has not installed machinery and therefore there is nothing payable for that quarter. Therefore it is submitted that in respect of a quarter where the assessee had not put into use the new machinery, the Assessing Authority cannot pass any liability.

3. Petitioner also relied on a judgment of this Court in WP (C) No.22216/2007. It was held therein that, if the petitioner has installed the machine only on 2.7.2007, then demand of tax at the compounded rate should be limited to 3 quarters of the year.

4. Taking note of the dictum as above, I am of the view that Ext.P7 is liable to the set aside. Therefore, after verifying the materials relied on by the petitioner in respect of first quarter,

necessary fresh orders shall be passed in the light of the judgment of this Court in WP(C) No.22216/2007. The petitioner shall produce copy of the judgment in WP(C) No.22216/2007 along with this judgment and other relevant materials relied on by the petitioner to substantiate his claim for excluding the first quarter of 2007. Petitioner shall appear before the 1st respondent on 29.07.2015. Thereafter, entire assessment shall be recalculated in the light of the above, within a further period of one month.

The writ petition is disposed of.

Sd/-
**A. MUHAMED MUSTAQUE, JUDGE.**

Pn