

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WP(C).No. 16662 of 2015 (G)

PETITIONER:

**GEORGE VARKEY, AGED 53 YEARS,
S/O.VARKEY, IYKKARAKUZHIL HOUSE, ALPARA (PO),
CHURULI, KANJIKKUZHY, IDUKKI DISTRICT-685 587.**

BY ADV. SRI.JOBI JOSE KONDODY.

RESPONDENTS:

- 1. THE DEPUTY COMMISSIONER OF CENTRAL EXCISE,
OFFICE OF THE DEPUTY COMMISSIONER OF CENTRAL EXCISE,
MUVATTUPUZHA DIVISION, KPC TOWERS, TB JUNCTION,
MUVATTUPUZHA, ERNAKULAM DISTRICT-686 661.**
- 2. THE SUPERINTENDENT OF CENTRAL EXCISE,
THODUPUZHA RANGE, NEEROLICKAL BUILDING,
MANAKKAD ROAD, THODUPUZHA, IDUKKI-685 584.**
- 3. THE EXECUTIVE ENGINEER,
ROADS DIVISION, IDUKKI, PAINAVU,
IDUKKI DISTRICT-685 580.**
- 4. THE ASSISTANT EXECUTIVE ENGINEER,
ROAD SUB DIVISION, PAINAVU, IDUKKI DISTRICT-685 580.**
- 5. THE MANAGING DIRECTOR,
KERALA POLICE HOUSING AND CONSTRUCTION
CORPORATION LIMITED, CSN STADIUM, PALAYAM,
THIRUVANANTHAPURAM-695 033.**

**R1 & R2 BY ADVS. SRI.RANJITH JACOB KOSHY, SC.
SRI.THOMAS MATHEW NELLIMOOTTIL, SC
R3 & R4 BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.
R5 BY ADV. SRI.M.DINESH.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P1 A TRUE COPY OF THE WORK ORDER DATED 26.08.2006 ISSUED BY THE FIFTH RESPONDENT TO THE PETITIONER FOR THE CONSTRUCTION OF TWO UPPER SUBORDINATE QUARTERS AT DISTRICT ARMED RESERVE, KUYILIMALA, IDUKKI.
- EXT.P2 A TRUE COPY OF THE WORK ORDER ISSUED BY THE FIFTH RESPONDENT TO THE PETITIONER DATED 26.08.2006 ISSUED BY THE FIFTH RESPONDENT TO THE PETITIONER FOR THE CONSTRUCTION OF SIX LOWER SUBORDINATE QUARTERS AT KANJIKKUZHI IN IDUKKI DISTRICT.
- EXT.P3 A TRUE COPY OF THE FINAL BILLS PASSED BY THE FIFTH RESPONDENT WITH REGARD TO EXHIBIT P1 WORK ON VARIOUS DATES.
- EXT.P4 A TRUE COPY OF THE FINAL BILLS ON VARIOUS DATES PASSED BY THE FIFTH RESPONDENT WITH REGARD TO EXHIBIT P2 WORKS.
- EXT.P5 A TRUE COPY OF THE ORDER DATED 18.12.2012 IN O.O.35/2012 ST PASSED BY THE FIRST RESPONDENT.
- EXT.P6 A TRUE COPY OF THE CIRCULAR NO.B1/6/2005-TRU DATED 27.07.2005.
- EXT.P7 A TRUE COPY OF THE NOTICE TO GARNISHEE DATED 18.02.2015 ISSUED BY THE FIRST RESPONDENT UNDER SECTION 87(B)OF CHAPTER V OF THE FINANCE ACT, 1994.

RESPONDENTS' EXHIBITS:

NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.16662 of 2015

Dated this the 5th day of June, 2015

JUDGMENT

The petitioner is a Contractor impugns Ext.P5 order of the Deputy Commissioner of Central Excise demanding Service Tax. The above order is dated 18/12/2012. Under Section 85(3) of the Finance Act, 1994, if any person aggrieved by the decision or order passed by the adjudication authority, shall file an appeal within three months from the date of receipt of a copy of the decision or order. It is under the first proviso to the above provision; the Commissioner of Appeals is also have power to entertain the appeal beyond three months, if such an appeal is filed within a further period of three months for sufficient cause. The petitioner did not impugn the order before the appellate authority. The petitioner has no case that he had never received the impugned order nor he had received notice in the proceedings leading to Ext.P5. There is no legal infirmity with Ext.P5 order otherwise could be challenged as a nullity of the proceedings.

2. The petitioner has challenged the order before this Court based on the merit of the decision. The petitioner having failed to

avail appellate remedy on account of the expiry of the period of limitation, cannot invoke Article 226 of the Constitution to decide the issue on merit. This Court under Article 226 of the Constitution cannot upset finding in the impugned order, when such finding could have been rectified through the appeal and that remedy has been lost on account of the laches on the part of the petitioner. In that view of the matter, this writ petition is dismissed declining jurisdiction.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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