

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WP(C).No. 18365 of 2015 (U)

PETITIONER(S) :

A.K. SHAJI,
GREEN ENGINEERING SERVICES, CIVIL CONTRACTOR,
CIVIL STATION ROAD, KAKKANAD, COCHIN,
PIN 682030

BY ADV. SRI.R.MURALIDHARAN (AROOR) .

RESPONDENT(S) :

1. THE COMMERCIAL TAX OFFICER,
(WORKS CONTRACT), DEPARTMENT OF COMMERCIAL TAXES,
CLASS TOWER, OLD RAILWAY STATION ROAD, ERNAKULAM,
PIN - 682 018.
2. THE DEPUTY COMMISSIONER (APPEALS) ,
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM, PIN - 682 015.
3. THE INSPECTING ASSISTANT COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM AT CIVIL STATION,
KAKKANAD, PIN - 682 030.

BY SENIOR GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR 2011-12 DATED 31.03.2015.
- EXT. P2: TRUE COPY OF THE CERTIFICATE ISSUED BY THE AWARDER DATED 30.04.2011 FOR RS.1810/-.
- EXT. P2 A: TRUE COPY OF THE CERTIFICATE ISSUED BY THE AWARDER DATED 18.07.2011 FOR RS.71,538/-.
- EXT. P2 B: TRUE COPY OF THE CERTIFICATE ISSUED BY THE AWARDER DATED 11.10.2011 FOR RS.29513/-.
- EXT. P2 C: TRUE COPY OF THE CERTIFICATE ISSUED BY THE AWARDER DATED ..10.2011 FOR RS.59,540/-.
- EXT. P2 D: TRUE COPY OF THE CERTIFICATE ISSUED BY THE AWARDER DATED 03.12.2011 FOR RS.83,325/-.
- EXT. P2 E: TRUE COPY OF THE CERTIFICATE ISSUED BY THE AWARDER DATED 20.01.2012 FOR RS.27,246/-.
- EXT. P2 F: TRUE COPY OF THE CERTIFICATE ISSUED BY THE AWARDER DATED 12.03.2012 FOR RS.14,430/-.
- EXT. P2 G: TRUE COPY OF THE CERTIFICATE ISSUED BY THE AWARDER DATED 23.04.2012 FOR RS.66,190/-.
- EXT. P3: TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 30.05.2015.
- EXT. P4: TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RRESPONDENT DATED 30.05.2015.
- EXT. P5: TRUE COPY OF THE STAY ORDER PASSED BY THE 2ND RESPONDENT DATED 09.06.2015.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.18365 of 2015

Dated this the 19th day of June, 2015

J U D G M E N T

The petitioner impugns Ext.P5 conditional order passed by the appellate authority in the stay application filed as against recovery based on Ext.P1 assessment order.

2. The learned counsel for the petitioner submits that, the only issue before the appellate authority is whether the petitioner is entitled for full credit of the TDS effected by the awarder. The petitioner relies on Ext.P2 series. It is also submitted that, merely because of non filing of audit reports and annual returns, these deductions cannot be ignored. It is further submitted that, the appellate authority did not advert to Ext.P2 series which clearly shows that, the petitioner is entitled for a credit.

3. The fact remains is that, the petitioner failed to submit audit report and annual return. No doubt that, the petitioner requires merit of consideration with regard to the TDS certificates. The appellate authority did not advert to these aspects. Nevertheless this Court is of the view that, any further reconsideration of the order would result in protraction of the proceedings.

In that view of the matter, this writ petition is disposed of modifying the impugned order to the effect that, the petitioner shall deposit an amount of ₹50,000/- (Rupees Fifty thousand only) in

substitution of the 1/3rd amount ordered by the appellate authority in the impugned order within a period of one month from the date of receipt of a copy of this judgment. It is made clear that, the petitioner shall abide by the other conditions in the impugned order.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

AV