

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 26845 of 2015 (E)

PETITIONER:

**KASARGODE HOLLOW BRICKS NIRMANA THOZHILALI
VYVASAYA SAHAKARANA SANGHAM LTD.,
NEAR CITY VYVASAYA SAHAKARANA SANGHAM LTD.
NEAR CITY TOWER, M.G.ROAD, KASARAGODE-671 121,
REPRESENTED BY ITS SECRETARY-MOHAMMED.**

**BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA**

RESPONDENTS:

- 1. COMMISSIONER (CENTRAL EXCISE, CUSTOMS AND SERVICE TAX),
CALICUT COMMISSIONERATE, CR BUILDING, MANANCHIRA,
KOZHIKODE-673 001.**
- 2. SUPERINTENDENT OF CENTRAL EXCISE,
DIVISIONAL PREVENTIVE UNIT,
OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE,
KANNUR DIVISION, KUZHIKUNNU, KANNUR-670 001.**

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EXCISE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 TRUE COPY OF THE BYELAW OF THE PETITIONER-SOCIETY DATED 26.5.2011
- P2 TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER AND THE PORT CONSERVATOR, KASARGODE DATED 27.5.2011
- P2(A) TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER AND PORT CONSERVATOR,KASARAGODE DATED 31.5.2012
- P2(B) TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER AND THE PORT CONSERVATOR, KASARAGODE DATED 29.10.2013
- P3 TRUE COPY OF THE TENDER DOCUMENT FOR THE YEAR 2012-13 DATED NIL
- P4 TRUE COPY OF THE SUMMONS ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 10.12.2014
- P5 TRUE COPY OF THE DEPOSITION OF THE PRESIDENT OF THE PETITIONER SOCIETY DATED 23.12.2014
- P6 TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DATED 2.7.2015.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.26845 of 2015

.....
Dated this the 7th day of September, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P6 show cause notice that is issued to the petitioner by the 1st respondent, asking him to show cause as to why amounts should not be recovered from him towards service tax in respect of dredging services. The challenge in the writ petition against Ext.P6 notice is primarily premised on the aspect of jurisdiction, in that, the petitioner would contend that the activities carried on by him do not fall within the ambit of dredging services under the Finance Act, 1994 as amended. The petitioner has also raised various other contentions on the merits of the issue.

2. I have heard the learned counsel for the petitioner and also the learned Standing counsel for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, inasmuch as the petitioner is challenging Ext.P6 show cause notice in these proceedings, this Court ought not to interfere with the said notice at

this stage since the petitioner has an effective alternative remedy by way of approaching the 1st respondent with a reply/objection to Ext.P6 show cause notice, and getting the matter adjudicated before the said authority. I, therefore, dismiss the writ petition in its challenge against Ext.P6 show cause notice and relegate the petitioner to his alternate remedy of filing a reply to Ext.P6 show cause notice before the 1st respondent, and getting the matter adjudicated before the said authority. I make it clear that, if the petitioner prefers a detailed reply/objection to Ext.P6 show cause notice, then the 1st respondent, while adjudicating the issue shall advert to the objections raised by the petitioner and specifically deal with the said objections while passing orders in the adjudication proceedings. The petitioner shall also be afforded a personal hearing before passing orders in the adjudication proceedings.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns