

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(C).No. 27071 of 2015 (H)

PETITIONER(S):

**SRI.MAHESH KARTHIKEYAN,
(MG. PARTNER), M/S.G.K. CONTRACTORS,
II FLOOR, 2B, ANATHANAM STUDIOS,
OLD RAILWAY STATION CROSS ROAD,
KOCHI-682 018.**

BY ADV. SRI.K.J.VINCENT (MUNDAMVELI).

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT, TRIVANDRUM-695 001.**
- 2. THE ASST. COMMISSIONER-I (WORKS CONTRACT),
CLASS TOWERS, OLD RAILWAY STATION ROAD,
KOCHI-682 018.**
- 3. THE INSPECTING ASST. COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
CIVIL STATION, KAKKANAD, KOCHI-682 030.**

BY GOVT. PLEADER SRI.LIJU V.STEPHEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 : ANNUAL FOR THE YEAR 2009-2010 OF THE M/S.GK CONTRACTORS, ERNAKULAM, COCHIN-18.
- P2 : AUDITED ACCOUNTS OF THE PETITIONER FOR THE YEAR 2009-2010.
- P3 : STATEMENT OF TOTAL RECEIPT OF TDS CERTIFICATES FOR 2009-10.
- P4 : TDS CERTIFICATE FOR RS. 1,47,281 BY CHEQUE CK03864577 DATED 06-04-2010 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPPALLY, TIN 32072086495.
- P5 : TDS CERTIFICATE FOR RS. 49490 BY CHEQUE NO.CK03538645 DATED 05-03-2010 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPPALLY, TIN 32072086495.
- P6 : TDS CERTIFICATE FOR RS. 66317 BY CHEQUE NO.CK03337130 DATED 05-02-2010 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPALLY, TIN 32072086495.
- P7 : TDS CERTIFICATE FOR RS. 59388 BY CHEQUE NO. CK03100724 DATED 05-01-2010 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPALLY, TIN 32072086495.
- P8 : TDS CERTIFICATE FOR RS.62317 BY CHEQUE NO.CK02878879 DATED 05-12-2009 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPALLY, TIN 32072086495.
- P9 : TDS CERTIFICATE FOR RS. 25171 BY DD NO.877892 DATED 06-11-2009 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPPALLY, TIN 32072086495.
- P10 : TDS CERTIFICATE FOR RS. 29613 BY CHALAN NO.364 DATED 07-10-2009 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPPALLY, TIN 32072086495.
- P11 : TDS CERTIFICATE FOR RS.23691 BY CHEQUE NO.070988 DATED 05-09-2009 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPPALLY, TIN 32072086495.
- P12 : TDS CERTIFICATE FOR RS.43165 BY CHEQUE NO.070944 DATED 5-8-2009 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPALLY, TIN 32072086495.
- P13 : TDS CERTIFICATE FOR RS.119227 BY CHEQUE NO.228518 DATED 5-4-2010 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPPALLY, TIN 32072086495.
- P14 : TDS CERTIFICATE FOR RS.109618 BY CHEQUE NO.468852 DATED 1-1-2010 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPALLY, TIN 32072086495.

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- P15 : TDS CERTIFICATE FOR RS.98190 BY CHEQUE NO.464632 DATED 5-9-2009 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPALLY, TIN 32072086495.**
- P16 : TDS CERTIFICATE FOR RS.105099 BY CHEQUE NO.460687 DATED 5-9-2009 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPALLY, TIN 32072086495.**
- P17 : TDS CERTIFICATE FOR RS.19230 BY CHEQUE NO.456591 DATED 5-4-2010 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPALLY, TIN 32072086495.**
- P18 : TDS CERTIFICATE FOR RS.10988 BY CHEQUE NO.4342512 DATED 5-1-2008 BY M/S.OLIVE BUILDERS & DEVELOPERS EDAPALLY, TIN 32072086495.**
- P19 : RECONCILIATION STATEMENT FILED BEFORE THE ASSESSING AUTHORITY ALONG WITH TDS CERTIFICATE**
- P20 : ORIGINAL ASSESSMENT ORDER 32072069935/2009-10 DATED 29-05-2014 OF THE ASST. COMMISSIONER-I WORKS CONTRACT, ERNAKULAM.**
- P21 : REMAND ORDER NO.KVATA/466/2015/2009-10 DATED 30-03-2015 OF DEPUTY COMMISSIONER (APPEALS), ERNAKULAM.**
- P22 : PRE ASSESSMENT NOTICE DATED 10-4-2015 OF THE ASST. COMMISSIONER I (WORKS CONTRACT) ERNAKULAM.**
- P23 : PRE PENALTY NOTICE OF THE ASST COMMISSIONER I (WORKS CONTRACT) DATED 10-4-2015, ERNAKULAM.**
- P24 : ASSESSMENT ORDER NO.32072069935 DATED 01-06-2015 OF THE ASST. COMMISSIONER I WORKS CONTRACT, ERNAKULAM.**
- P25 : PENALTY ORDER NO.32069935/2009-10 DATED 01-06-2015 OF THE ASST. COMMISSIONER (WORKS CONTRACT) ERNAKULAM.**
- P26 : REVENUE RECOVERY NOTICE NO.A5/2054/15 DATED 07-08-2015 ISSUED BY THE THIRD RESPONDENT.**
- P27 : REVENUE RECOVERY NOTICE NO.15/2047/15 DATED 07-08-2015 ISSUED BY THE THIRD RESPONDENT.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.27071 OF 2015 (H)

Dated this the 8th day of September, 2015

J U D G M E N T

Challenge in the writ petition is against Ext.P24 order of assessment and Ext.P25 order of penalty passed by the 2nd respondent. Although various contentions have been raised in the writ petition, against the said orders, I find that, both Exts.P24 and P25 orders were passed by the 2nd respondent, after noting that although a notice was served on the petitioner, granting him time to prefer a reply, and also intimating him of the date of personal hearing, the petitioner did not file any reply or appear for the personal hearing on the date stipulated. Under these circumstances, I do not see any reason to interfere with Exts.P24 and P25 orders in these proceedings under Article 226 of the Constitution of India. This is more so, because, the petitioner can avail the statutory remedies available under the KVAT Act against both Exts.P24 and P25 orders of the 2nd respondent. The writ petition, in its challenge against Exts.P24 and P25 orders, is therefore dismissed.

Counsel for the petitioner would submit that there is presently a demand against him pursuant to Exts.P24 and P25 orders. Taking note of the said submission, while dismissing the writ petition, I stay the recovery proceedings pursuant to Exts.P24 and P25, for a period of two weeks from today, so as to enable the petitioner to avail the statutory remedies against Exts.P24 and P25 orders, in the meanwhile.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp