

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C) .No. 28924 of 2015 (M)

PETITIONER(S) :

M/S. TVK CONSTRUCTIONS,
ARAMAM, PADA NORTH
KARUNAGAPPALLY (PRESENTLY SITUATED AT POST BOX NO. 59
MOONNUTHENGIL BUILDING, PADA SOUTH, KARUNAGAPPALLY
KOLLAM -690 518)

BY ADVS.SMT.R.CHITRA
SRI.B.RAVINDRAN NAIR
SRI.G.ANANTHANARAYANAN

RESPONDENT(S) :

1. UNION OF INDIA,
REPRESENTED BY REVENUE SECRETARY,
MINISTRY OF FINANCE, NEW DELHI-110 001
2. CUSTOMS EXCISE SERVICE TAX APPELLATE TRIBUNAL,
FKCCI COMPLEX, K G ROAD, BANGLORE- 110 001.
3. COMMISSIONER OF CENTRAL EXCISE & CUSTOMS,
ICE BHAVAN, PRESS CLUB ROAD, TRIVANDRUM-695 001.
4. THE MANAGING DIRECTOR,
KERALA MINERALS AND METALS LTD.,
CHAVARA, KOLLAM - 691 106.

BY SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CENTRAL EXCISE & CUSTOMS
BY ADV.SMT.LATHA ANAND

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1: TRUE COPY OF THE PAPER BOOK FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P2: TRUE COPY OF THE STAY ORDER NO. 20012/15 AWARDED BY RESPONDENT NO. 2 TO THE PETITIONER.
- EXT.P3: TRUE COPY OF THE LETTER DT. 10/3/15 ISSUED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXT.P4: TRUE COPY OF THE PETITION FOR EXTENSION OF TIME FOR COMPLIANCE DT. 3/6/15 FILED BY THE PETITIONER BEFORE RESPONDENT NO. 2.
- EXT.P5: A TRUE COPY OF THE MISECELLANEOUS ORDER NO. 20906/2015 DT. 3/6/15 AWARDED BY THE REPENDENT NO TO THE PETITIONER.
- EXT.P6: A TRUE COPY OF THE INTIMATION LETTER/ADJOURNMENT NOTICE ISSUED BY THE RESPONDENT NO.2.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.28924 of 2015

.....
Dated this the 6th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P2 and P5 orders passed by the 2nd respondent Tribunal in applications preferred by the petitioner for waiver of pre-deposit and stay of service tax amounts that were confirmed against the petitioner by the 3rd respondent. The challenge in the writ petition against Exts.P2 and P5 orders is premised on the contention that while passing the said orders, the 2nd respondent Tribunal did not exercise its discretion in a valid manner. Counsel for the petitioner would submit that, the 2nd respondent Tribunal did not go into the prima facie case that was projected by the petitioner in the application for waiver of pre-deposit and stay of recovery of amounts confirmed against the petitioner by the order of the 3rd respondent.

2. I have heard the learned counsel for the petitioner and 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, although various contentions have been raised in the writ petition against

Exts.P2 and P5 orders, in Ext.P2 order that was passed by the 2nd respondent Tribunal, the Tribunal takes note of the offer made by counsel for the petitioner to deposit 25% of the amount demanded as a condition for the grant of stay. It was this offer that was considered as reasonable by the 2nd respondent Tribunal while directing the petitioner to deposit the same as a condition for grant of stay in favour of the petitioner. Thereafter, in Ext.P5 order which was passed by the same Tribunal, in an application for extension of time for complying with the directions in Ext.P2 order, it was submitted on behalf of the petitioner that they had already deposited an amount of Rs.10 lakhs and all that was sought for was a further time of 12 weeks to deposit the balance amounts. The 2nd respondent Tribunal then extended the time by another four weeks to deposit the balance amounts. It is thereafter that, through this writ petition, the petitioner challenges Exts.P2 and P5 orders. On a consideration of Exts.P2 and P5 orders, and taking note of the fact that, the said orders were passed on a submission made by counsel for the petitioner, I see no reason to interfere with Exts.P2 and P5 orders in this writ petition under Article 226 of the Constitution of India. Resultantly, the writ petition fails and is accordingly dismissed.

Counsel for the petitioner would submit that, the time for

complying with the directions of the 2nd respondent Tribunal in Ext.P5 order has since expired and the petitioner was unable to pay the balance amounts. Taking note of the plea of financial hardship urged on behalf of the petitioner, and the fact that the petitioner has approached this Court through the present writ petition, I make it clear that, if the petitioner complies with the directions in Ext.P5 order on or before 20.10.2015 the same shall be treated as a valid compliance with Ext.P5 order and the 2nd respondent tribunal shall proceed with the matter accordingly.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns