

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C) .No. 29499 of 2014 (J)

PETITIONER(S) :

JOSEPH.P.P.,
(FORMERLY PROPRIETOR OF M/S.ORION INDUSTRIES),
PALLATH HOUSE, CHURCH ROAD, PALARIVATTOM,
COCHIN - 682 025
REPRESENTED BY HIS NEXT FRIEND SMT.MOLLY JOSEPH,
W/O.JOSEPH P.P, PALLATH HOUSE, CHURCH ROAD,
PALARIVATTOM, COCHIN - 682 025, ERNAKULAM DISTRICT.

BY ADV. SRI.TOMSON T.EMMANUEL.

RESPONDENT(S) :

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1. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, (*2ND CIRCLE), KALAMASSERY AT KAKKANAD,
CIVIL STATION, COCHIN - 682 030.
[ADDRESS OF R1 CORRECTED AS '1ST CIRCLE' INSTEAD OF
'2ND CIRCLE' AS PER ORDER DATED 27.11.2014 IN IA 16153/14.]
 2. DEPUTY TAHSILDAR (REVENUE RECOVERY),
KANAYANNUR TALUK, ERNAKULAM, COCHIN - 682 011.
 3. STATE OF KERALA,
REPRESENTED BY SECRETARY TO TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P-1: TRUE COPY OF SALE DEED NO.3165 OF 1997 DATED 27.9.1997 EXECUTED BY THE PETITIONER IN FAVOUR OF SMT.HEMA RAMANATH, WHILE SELLING THE PROPERTY IN SURVEY NO.191/4 OF POONITHURA VILLAGE AFTER STOPPAGE OF BUSINESS, DEMOLISHING THE WORKSHOP.
- EXT.P-2: TRUE COPY OF REVENUE RECOVERY NOTICE IN FORM NO.1 ISSUED BY THE 2ND RESPONDENT, ALLEGED TO BE ON THE BASIS OF DEMAND CREATED BY 1ST RESPONDENT FOR 2005-06, WHICH WAS SERVED ON 7.10.2014 TO THE PETITIONER.
- EXT.P-2 (A) : TRUE COPY OF REVENUE RECOVERY NOTICE IN FORM NO.10 ISSUED BY THE 2ND RESPONDENT, ALLEGED TO BE ON THE BASIS OF A DEMAND CREATED BY 1ST RESPONDENT FOR 05-06, WHICH WAS SERVED ON 7.10.2014 TO THE PETITIONER.
- EXT.P-3: TRUE COPY OF CERTIFIED COPY OF EX-PARTY ASSESSMENT ORDER DATED 10.3.2014 FOR THE YEAR 2005-06, WHICH WAS ISSUED TO THE PETITIONER ON 9.10.2014.
- EXT.P-4: TRUE COPY OF MEDICAL CERTIFICATE DATED 11.10.2014 ISSUED BY SENIOR CONSULTANT NEUROLOGIST STATING THE PHYSICAL CONDITION OF PETITIONER.
- EXT.P-4 (A) : TRUE COPY OF MRI SCANNING REPORT DATED 16.9.2010 OF THE PETITIONER, AT THE TIME OF MEDICAL EXAMINATION.
- EXT.P-5: TRUE COPY OF REPRESENTATION DATED 13.10.2014, MADE BY SON OF THE PETITIONER BEFORE DISTRICT COLLECTOR, ERNAKULAM, MARKING COPY OF 2ND RESPONDENT FOR KEEPING IN ABEYANCE EXT.P2 SERIES OF RR NOTICES.
- EXT.P-6: TRUE COPY OF CERTIFICATE DATED 24.10.2014 ISSUED BY ASSISTANT ENGINEER OF ELECTRICAL SECTION, PALARIVATTOM OF KERALA STATE ELECTRICITY BOARD REFERRING THE DISCONNECTION OF POWER SUPPLY TO CONSUMER NO.13929 MADE ON 15.1.1997, WHEREIN THE PETITIONER WAS CONDUCTING WORKSHOP.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 29499 of 2014

Dated this the 30th day of July, 2015

J U D G M E N T

The petitioner has approached this Court challenging the order passed under Section 24(1) of the KGST Act, for the return period of 2005-06. Apart from raising a question regarding limitation, the petitioner raised a question regarding legality of the order on various grounds.

2. Petitioner's case is that, his workshop has been closed down in the year 1997 and the building was dismantled. It is submitted that no notice in Form No.18A was issued by the respondents and no formalities have been followed in the matter.

3. Learned Government Pleader on the other hand points out that, the petitioner did not respond to the notice. It is submitted that this is based on the penalty proceedings under Section 47(6) and assessment proceedings have been completed. However, it is also admitted that notice was also served by affixure.

4. This Court is of the view that, in view of the fact that no notice was served on the petitioner, the matter requires

reconsideration. The authority has to verify whether the workshop was demolished in the year 1997 itself and an opportunity should be given to the petitioner to raise all the contentions including limitation.

5. In view of the above, following orders are issued:

- (i) The impugned order is set aside.
- (ii) The petitioner or the authorised representative shall appear before the authority on 18.08.2015 at 11.a.m.
- (iii) The authority on that day or subsequent day shall give copies of all the documents relied by them in terms of assessment under Section 24(1) of KVAT Act.
- (iv) Thereafter, necessary orders shall be passed within a period of two months, after affording an opportunity to the petitioner and advertng to his objections.

This writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.