IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).NO. 29925 OF 2014 (M)

PETITIONER(S):

M/S.KAVUNKAL GRANITES (P) LTD.,
MALAYALAPUZHA - ERAM-P.O., PATHANAMTHITTA,
REPRESENTED BY ITS MANAGING DIRECTOR
SABU KURIAKOSE.

BY ADVS.SRI.AJI V.DEV
SRI.SUSHANTH.J.

RESPONDENT(S):
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1. AGRICULTURAL INCOME TAX & COMMERCIAL TAX OFFICER, RANNY - 686 101.

2. INSPECTING ASST. COMMISSIONER, COMMERCIAL TAXES, PATHANAMTHITTA -689 645.

3. THE COMMISSIONER OF COMMERCIAL TAXES, TAX TOWERS, KILLIPPALAM, KARAMANA P.O., THIRUVANANTHAPURAM - 695 002.

4. THE SECRETARY TO GOVERNMENT, TAXES, THIRUVANANTHAPURAM - 695 001.

BY GOVT. PLEADER SRI.SUDHEESH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).NO. 29925 OF 2014 (M)

APPENDIX

PETITIONER'S EXHIBITS:-

P1 -	**A TRUE COPY OF THE PURCHASE BILL OF THE PRIMARY CRUSHER DATED 20.07.2012.**
P1(A) -	**A TRUE COPY OF THE PURCHASE BILL OF THE CONE CRUSHER DATED 23.10.2012.**
P1(B) -	**A TRUE COPY OF THE PURCHASE BILL OF THE VSI MACHINE DATED 31.10.2012.**
P2 -	**A TRUE COPY OF THE APPLICATION IN FORM - 1B DATED 22.07.2014.**
P3 -	**A TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT DATED 19.09.2014.**
P4 -	**A TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 10.10.2014.**
P5 -	**A TRUE COPY OF THE PROCEEDINGS DATED 20.10.2014 PASSED BY THE 1ST RESPONDENT REJECTING COMPOUNDING APPLICATION.**
P6 -	**A TRUE COPY OF THE FORM 1E AVAILABLE FROM KVATIS**
P7 -	**A TRUE COPY OF THE JUDGMENT DATED 05.03.2009 REPORTED IN (2009) 17 KTR 162.**

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.29925 of 2014

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Dated this the 23rd day of February, 2015

<u>J U D G M E N T</u>

The petitioner has approached this Court challenging Ext.P5 order passed by the 1st respondent whereby his application for compounding under Section 8(b) of the Kerala Value Added Tax Act, 2003, read with Rule 11 of the Kerala Value Added Tax Rules, 2005 has been rejected. In the writ petition, the petitioner challenges Ext.P5, inter alia, on the ground that the rejection of his application for compounding by the 1st respondent was by ignoring the statutory provisions and without adverting to the factual situation prevailing in his unit. The petitioner has not, however, demonstrated any inherent illegality in Ext.P5 order on account of any lack of jurisdiction in the officer passing the said order. In that view of the matter, I feel that the remedy of the petitioner is to prefer an appeal against Ext.P5 order before the appellate authority under the Kerala Value Added Tax Act. Thus, without prejudice to the right of the petitioner to impugn Ext.P5 order before the appellate authority under the Kerala Value Added Tax Act, the present writ petition, in its challenge against Ext.P5 order, is dismissed as not maintainable.

Counsel for the petitioner would submit that he will prefer the appeal against Ext.P5 order within a period of two weeks from today and prays that recovery steps against him the put on hold till such time so as to enable him to approach the appellate authority. Taking note of the said submission of counsel for the petitioner, I make it clear that recovery steps for recovery of any amount of tax or penalty from the petitioner shall be kept in abeyance for a period of two weeks from today so as to enable the petitioner to approach the appellate authority.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns