

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 37151 of 2015 (T)

PETITIONER(S):

**M/S. FATHIMA GOLD PRIVATE LTD.,
RAMAN CENTRE, 3073R & A18, 35
BANK ROAD, KANNUR,
REPRESENTED BY ITS MANAGING DIRECTOR,
MUHAMMED RAFI.**

**BY ADVS.SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM**

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES, 1ST CIRCLE,
KANNUR-670 001.**
- 2. THE COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
TAX TOWER, KARAMANA,
THIRUVANANTHAPURAM-695 001.**
- 3. STATE OF KERALA,
REPRESENTED BY ITS FINANCE SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**

BY GOVERNMENT PLEADER SRI.R.RENJITH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 37151 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE COMPOUNDING APPLICATION IN FORM NO.1B.**
- P2 : COPY OF THE PERMISSION TO PAY TAX UNDER COMPOUNDING SCHEME FOR THE YEAR 2013-14.**
- P3 : COPY OF THE NOTICE NO.32120569798/13-14 DTD.18.9.2015 ISSUED BY THE 1ST RESPONDENT.**
- P4 : COPY OF THE REPLY DTD.15.10.2015.**
- P4(A): COPY OF THE ANNUAL RETURN IN FORM 10D A FOR THE YEAR 2013-14.**
- P5 : COPY OF THE ORDER AND DEMAND NOTICE DTD.30.10.2015.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.37151 of 2015

Dated this the 8th day of December 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 order passed by the 1st respondent, rectifying a compounding order, that was earlier passed in relation to the petitioner under the KVAT Act, for the assessment year 2013-14. Although various grounds are raised in the writ petition in its challenge against Ext.P5 order, I am of the view that the dispute raised by the petitioner being entirely factual in nature and requiring a detailed consideration of documents etc., it would not be appropriate for this Court to go into the matter in these proceedings under Article 226 of the Constitution of India. The appropriate remedy for the petitioner would be to challenge Ext.P5 order in further proceedings under the KVAT Act before the appellate authority. I therefore dismiss the writ petition in its challenge against Ext.P5 order.

Counsel for the petitioner seeks some time to pursue his appellate remedy against Ext.P5 order. Taking note of the said submission of counsel for the petitioner as also the plea of financial hardship, I direct that the recovery proceedings pursuant to Ext.P5

order shall be kept in abeyance for a period of three weeks so as to enable the petitioner to pursue his appellate remedy against Ext.P5 order, before the 2nd respondent. I make it clear that the petitioner can raise all contentions open to him before the appellate authority in the appeal proposed against Ext.P5 order.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/