

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM &

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

THURSDAY ,THE 21ST DAY OF MARCH 2019/30TH PHALGUNA, 1940

OP (TAX).No. 2 of 2019

PETITIONER:

ANIL KUMAR S.,
SREE NILAYAM, NEAR NEW KGC, KUNDARA P.O.,
KOLLAM DISTRICT.

BY ADV. SRI.BOBBY JOHN

RESPONDENTS:

- 1 THE COMMISSIONER OF STATE GOODS AND SERVICE TAX
DEPARTMENT,
KERALA, TAX TOWER, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM-695002.
- 2 THE COMMERCIAL TAX OFFICER-II,
WORKS CONTRACT, COMMERCIAL TAX, (NOW STATE
GOODS AND SERVICE TAX DEPARTMENT), KOLLAM-
691002.
- 3 THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL,
ADDITIONAL BENCH, SASTHAMANGALAM,

THIRUVANANTHAPURAM-695010.

OTHER PRESENT:

SPL.GP (TAX) - SRI.C.E.UNNIKRISHNAN

THIS OP TAX HAVING COME UP FOR ADMISSION ON 21.03.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OP(Tax) No. 2 OF 2019

-:2:-

C.K. ABDUL REHIM

&

R. NARAYANA PISHARADI, JJ.

OP(Tax) No. 2 OF 2019

Dated this the 21st day of March, 2019

JUDGMENT

The petitioner is invoking the supervisory jurisdiction vested on this court under [Article 227](#) of the Constitution of India for challenging Ext.P12 interim order passed by the Kerala Value Added Tax Appellate Tribunal, Additional Bench, Thiruvananthapuram, dated 28.02.2019.

2. The petitioner is a Works Contractor, whose assessment under the Kerala Value Added Tax Act, 2003(hereinafter referred to as the 'KVAT Act') with respect to the assessment year 2014-2015 was reopened, dehors the permission granted under Section 8A of the KVACT Act for payment of tax under the compounded rate; The order of assessment was challenged in appeal before the Deputy OP(Tax) No. 2 OF 2019 Commissioner, Appeals, in which the petitioner was unsuccessful. Being aggrieved, he approached the Tribunal in Second Appeal, TA(VAT)No.257/2018. An interim petition, IP No.362/2018 was also filed seeking stay of the recovery.

3. The Tribunal, after analysing the prima facie merit of the appeal, granted stay subject to condition of the petitioner depositing 30% of the total amount and on executing a bond for the balance, within a period of 30 days from the date of the order. We find that the supervisory jurisdiction vested on this court, which is inherent in nature, cannot be invoked to interfere with an interim order passed by the Tribunal, which is basically issued within their discretionary powers. The condition imposed by the Tribunal is on an evaluation of the prima facie merit of the appeal. As the Tribunal is in-seisen of the appeal itself, it may not be proper and justifiable on the part of this court to enter into an adjudication on the merits of the case. While exercising the discretionary jurisdiction, the Tribunal thought it just and proper OP(Tax) No. 2 OF 2019 to direct payment of 30% of the amount in dispute. It cannot be held that the said order suffers from any error, irregularity, illegality or impropriety. We find that the Tribunal had passed the order after proper and due application of mind. The impugned order is also a speaking one, elaborating about prima facie merit of the appeal. Hence we are not inclined to entertain this original petition.

4. Learned counsel for the petitioner made an appeal for indulgence of this court, on the basis of the submission that there is a delay of payment of about 31 lakhs effected and that the petitioner is not in a position to comply with the interim order. He had also drawn our attention to the proviso introduced to sub-section(4) of Section 55 of the KVAT Act, wherein the appellants in first appeals will get an automatic stay against further proceedings on remittance of 20% of the disputed amount.

5. In the case at hand, we find that the petitioner has not remitted any amount during the pendency of the appeal. OP(Tax) No. 2 OF 2019 However, considering the entire circumstances as mentioned above, we are inclined to make a reduction with respect to the condition imposed by the Tribunal, as a gesture of equity by making it clear that the case cannot be considered as a precedent in any matter.

6. Hence, while dismissing the above original petition, we modify Ext.P12 order passed by the Appellate Tribunal by reducing the condition for deposit of the amount, from 30% to 20% of the total amount due. The deposit as directed by us shall be made within one month from today.

Sd/- C.K. ABDUL REHIM, JUDGE.

Sd/- R. NARAYANA PISHARADI, JUDGE.

ul/-

[True copy] P.S. to Judge.

OP(Tax) No. 2 OF 2019 APPENDIX PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE WORK ORDER DATED 2.2.2015 ISSUED BY SHRI. RAVISANKAR VIDHYA MANDIR TRUST, KOLLAM EXHIBIT P2 TRUE COPY OF

THE APPLICATION DATED 16.2.2015 SUBMITTED BY THE PETITIONER BEFORE THE ASSESSING AUTHORITY EXHIBIT P3 TRUE COPY OF THE COMPOUNDING PERMISSION DATED 24.2.2015 PASSED BY THE ASSESSING AUTHORITY IN FORM NO.1E EXHIBIT P4 TRUE COPY OF THE ANNUAL RETURN SUBMITTED BY THE PETITIONER FOR THE YEAR 2014-15 EXHIBIT P5 TRUE COPY OF THE PENALTY ORDER DATED 31.7.2015 PASSED BY THE INTELLIGENCE OFFICER (IB) COMMERCIAL TAXES, KOLLAM EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 14.12.2016 IN WRIT APPEAL NO.2425/2016 EXHIBIT P7 TRUE COPY OF THE ASSESSMENT ORDER DATED 7.11.2016 PASSED BY 2ND RESPONDENT EXHIBIT P8 TRUE COPY OF THE FIRST APPELLATE ORDER DATED 24.3.2018 PASSED BY THE DEPUTY COMMISSIONER (APPEALS), KOLLAM EXHIBIT P9 TRUE COPY OF THE SECOND APPEAL NO.21.5.2018 FILED BY THE PETITIONER OP(Tax) No. 2 OF 2019 BEFORE THE 3RD RESPONDENT TRIBUNAL EXHIBIT P10 TRUE COPY OF THE STAY DATED 21.5.2018 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT TRIBUNAL EXHIBIT P11 TRUE COPY OF THE ARGUMENT NOTE DATED 28.2.2019 SUBMITTED BY THE COUNSEL FOR THE PETITIONER BEFORE THE TRIBUNAL EXHIBIT P12 TRUE COPY OF THE STAY ORDER DATED 28.2.2019 PASSED BY THE 3RD RESPONDENT TRIBUNAL