

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 30TH DAY OF APRIL 2013/10TH VAISAKHA 1935

WP(C).No. 11524 of 2013 (M)

PETITIONER(S):

KREALA STATE POWER & INFRASTRUCTURE
FINANCE CORPORATION LTD.
KPFC BHAVANAM, VELLAYAMBALAM
THIRUVANANTHAPURAM 695 010
REP. BY ITS MANAGING DIRECTOR, MS.K.K.DEVI

BY ADVS.SRI.ANIL D. NAIR
SRI.J.R.PREM NVAZ
SMT.NIVEDITA A.KAMATH
SRI.R.SREEJITH

RESPONDENT(S):

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1. COMMISSIONER OF INCOME TAX (APPEALS)
AAYAKAR BHAWAN, KOWDIAR, THIRUVANANTHAPURAM 695 003
 2. THE COMMISSIONER OF INCOME TAX,
ADAYAKAR BHAWAN, KOWDIAR, THIRUVANANTHAPURAM 695 003
 3. THE ASSISTANT COMMISISONER OF INCOME TAX
CIRCLE 1(1) AAYAKAR BHAWAN, KOWDIAR
THIRUVANANTHAPURAM 695 003

BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-04-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 11524 of 2013 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE ASSESSMENT ORDER DATED 27-12-2011 (A.Y 2009-10) ALONG WITH COVEING LETTER,ISSUED BY THE 3RD RESPONDENT

EXHIBIT P2: TRUE COPY OF THE APPEAL MEMORANDUM DATED 28-01-2012 FILED BEFORE THE 1ST RESPONDENT BY THE PETITIONER (A.Y 2009-10)

EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 23-02-2012 OF THIS HON'BLE COURT IN WPC NO 4556 OF 2012

EXHIBIT P4: TRUE COPY OF THE RODER OF THE 1ST RESPONDENT DATED 02-04-2012 (ORDER NO ITA 106/TVM/11-12

EXHIBIT P5: TRUE COPY OF THE NOTICE DATED 04-03-2013 NO CIR-1(1)TVM/12-13 ISSUED BY THE 3RD RESPONDENT

EXHIBIT P6: TRUE COPY OF THE APPLICATION DATED 28-01-2013 MADE BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P7: TRUE COPY OF THE LETTER DATED 07-03-2013 (C.NO.701/J/CIT/8/2012-13) SENT BY THE 2ND RESPONDENT TO THE PETITIONER

EXHIBIT P8: TRUE COPY OF THE CHALLAN EVIDENCING PAYMENT OF RS.19,60,000/- DATED 08-03-2013,REF. NO CK 26239505

EXHIBIT P8(A): TRUE COPY OF THE CHALLAN EVIDENCING PAYMENT OF RS.19,60,000/- DATED 21-03-2013 REF.NO CK 26763153

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

K.VINOD CHANDRAN, J.

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W.P.(C). No.11524 of 2013

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Dated this the 30th day of April, 2013

JUDGMENT

Petitioner, a public sector undertaking is aggrieved by the coercive steps initiated in pursuance to Ext.P1. On the assessment of the petitioner for the year 2009-10 being completed, Notice of Demand was also issued as per Ext.P1. The petitioner promptly approached the First Appellate Authority by way of an appeal and in the interim application for stay, Ext.P4 order was passed. Conditional order of stay was passed by the First Appellate Authority directing payment of 50% of the demand raised in five monthly installments payable from 15.04.2012 to 15.08.2012 . There was also a further direction that in respect of balance 50% of the demand, the petitioner will not be treated as assessee in default till 31.08.2012 or till the disposal of the appeal which ever is earlier.

2. Obviously the Appellate Authority gave itself a wide margin and intended to finish of the appeal by 31.08.2012.

However, that did not materialise and the assessee cannot be prejudiced for the reason only that the First Appellate Authority intended to take up the appeal and dispose it of before 31.08.2012. It is the contention of the assessee that when coercive steps were proceeded after expiry of 31.08.2012, further amounts were also deposited; now making the amounts remitted 75% of the total demand.

3. In any event as noticed above, the fact that the First Appellate Authority was not able to take up the matter and dispose of, the same, cannot prejudice the petitioner. Hence it is directed that no coercive steps shall be taken against the petitioner till disposal of the appeal.

This writ petition is allowed as above.

**K.VINOD CHANDRAN,
JUDGE**