IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

O.P.No. 75 of 2002 (H)

PETITIONER:

A.S.RAM, PROPRIETOR,
M/S.LAKSHMI CHEMICAL INDUSTRIES
INDUSTRIAL DEVELOPMENT AREA, EDAYAR, MUPPATHADAM P.O.
ERNAKULAM DISTRICT.

BY ADVS.SRI.C.K.THANU PILLAI
SMT.ASHA V.S.NAIR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM.

2. THE STATE LEVEL COMMITTEE FOR SALES TAX EXEMPTION, REPRESENTED BY THE CONVENOR DIRECTOR OF INDUSTRIES AND COMMERCE, VIKAS BHAVAN THIRUVANANTHAPURAM.

3. THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM.

4. THE SALES TAX OFFICER, SALES TAX OFFICE, NORTH PARUR.

R, BY ADV. SRI.RAJU JOSEPH
GOVT. PLEADER SRI.LIJU STEPHEN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13-08-2015, ALONG WITH WPC. 21155/2004 & WPC. 21222/2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 75 of 2002 (H)

APPENDIX

PETITIONER'S ANNEXURES:

EXT.P1: TRUE COPY OF NOTIFICATION SRO O.1729/93 ISSUED BY THE FIRST RESPONDENT.

EXT.P2: TRUE COPY OF ORDER NO.A8-4772/96 DATED 18.10.1996 ISSUED BY THE THIRD RESPONDENT.

EXT.P3: TRUE COPY OF APPLICATION FOR SALES TAX EXEMPTION DATED 8.5.1999 FILED BEFORE THE THIRD RESPONDENT.

EXT.P4: TRUE COPY OF ORDER NO.A8-5175/99 DATED 25.3.2000 ISSSUED BY THE THIRD RESPONDENT.

EXT.P5: TRUE COPY OF G.O.(MS)NO.169/98/ID DATED 24TH NOVEMBER, 1998 ISSUED BY THE FIRST RESPONDENT.

EXT.P6: TRUE COPY OF APPEAL IN FORM NO.7 DATED 19-4-2001 FILED BEFORE THE 2ND RESPONDENT.

EXT.P7: TRUE COPY OF LETTER NO.PC3/8892/2000/L.DIS. DATED 18.10.2000 ISSUED BY THE SECOND RESPONDENT.

EXT.P8: TRUE COPY OF ORDER NO.24171637/98-99 DATED 25.7.2001 OF THE FOURTH RESPONDENT.

EXT.P9: TRUE COPY OF ORDER NO.24176627/98-99/CST DATED 20-7-2001 ISSUED BY THE FOURTH RESPONDENT.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

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O.P.No.75 OF 2002, W.P.(C)No.21155 & 21222 of 2004

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Dated this the 13th day of August, 2015

JUDGMENT

<u>Antony Dominic, J.</u>

O.P.75/02 and W.P.(C)No.21155/04 are filed by the same petitioners while W.P.(C)No.21222/04 is filed by another party. In O.P.75/02 and W.P(C)21222/04, the challenge is against the exemption from sales tax on the additional investment, as provided under SRO 1729/93 on the ground that the industries involved are included in the negative list. The challenge in O.P.21155/04 is against the Revenue Recovery Proceedings for recovery of tax due which liability was fastened on the petitioner on the denial of exemption.

2. These cases were referred by a learned Single Judge for the consideration of the Division Bench. the Division Bench considered these cases together and passed common order dated 10.8.2004 adjourning the case awaiting the decision of the Apex Court in the Special Leave Petition filed against the judgment of this Court in *<u>Peekay respondent-Rolling Mills (P) Ltd. v. the Secretary to Government [2003 (3)</u>*

KLT 765]. Subsequently, the Apex Court allowed the appeals by its judgment in *Secretary to the Government and Others v. Peekay respondent-Rolling Mills P. Ltd. [2007] 6 VST 773 (SC)* and remitted the cases to the Division Bench of this Court for fresh disposal.

3. Thereafter, the cases were heard by a Division Bench of this Court and Writ Appeal 991/03 and connected cases were disposed of by judgment dated 3.3.2011, setting aside the impugned orders of rejection and directing reconsideration of the claim in the manner as directed in the judgment.

4. Since the issues raised in O.P.75/02 and W.P.(C)21222/04 are thus covered by the aforesaid judgment of the Division Bench, following the principles laid down in the judgment in W.A.991/03 and connected cases, this Original Petition and Writ Petitions are also disposed of quashing the impugned orders and directing the reconsideration of the claims in the light of the principles laid down in the judgment mentioned above.

5. Insofar as W.P.(C)21155/04 is concerned, the order dated 10th August 2004 passed by the Division Bench referred to above, the Court

has stayed the recovery of tax and, therefore, we direct that the stay ordered by the Division Bench on 10.8.2004 will continue until orders are passed as directed above.

With these directions, the Original Petition and Writ Petitions are disposed of.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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