IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

OP.No. 19487 of 2000 (T)

PETITIONER(S):

1.M/S.HINDUSTAN DORR OLIVER LIMITED,
DORR OLIVER HOUSE, CHAKALA ANDHERI (EAST),
BOMBAY - 400 099.

2.THE ASSISTANT MANAGER,
FINANCE & ACCOUNTS,
HINDUSTAN DORR-OLIVER LIMITED.,
MUMBAI.

BY ADVS.SRI.S.SOMAN
SMT.USHA RAVINDRAN

RESPONDENT(S):

1.STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

2.THE ASSISTANT COMMISSIONER OF COMMERCIAL
TAXES (ASSESSMENT), DEPARTMENT OF COMMERCIAL TAXES,
SPECIAL CIRCLE III, COMMERCIAL TAXES COMPLEX,
ERNAKULAM, KOCHI - 682 015.

R1-R2 BY GOVERNMENT PLEADER SMT.LILLY.K.T.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 19487 of 2000

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1 TRUE COPY OF THE APPLICATION DATED 29.4.1999 WITH CALCULATION AND DETAILS.

EXT.P2 TRUE COPY OF THE SALES TAX & INTEREST REMITTANCE DETAILS DATED 22.5.1999.

EXT.P3 TRUE COPY OF THE NOTICE DATED 2.12.1999 FOR THE YEAR 1984-85 OF 2ND RESPONDENT.

EXT.P4 TRUE COPY OF THE NOTICE DATED 2.12.1999 OF 2ND RESPONDENT FOR THE YEAR 1985-86.

EXT.P5 TRUE COPY OF THE NOTICE DATED 2.12.1999 OF 2ND RESPONDENT FOR THE YEAR 1986-87.

EXT.P6 TRUE COPY OF THE NOTICE DATED 2.12.1999 OF 2ND RESPONDENT FOR THE YEAR 1997-98.

EXT.P7 TRUE COPY OF THE NOTICE DATED 2.12.1999 OF 2ND RESPONDENT FOR THE YEAR 1989-90.

EXT.P8 TRUE COPY OF THE NOTICE DATED 3.12.1999 OF 2ND RESPONDENT FOR THE YEAR 1990-91.

EXT.P9 TRUE COPY OF THE NOTICE DATED 3.12.1999 OF 2ND RESPONDENT FOR THE YEAR 1991-92.

EXT.P10 TRUE COPY OF THE NOTICE DATED 3.12.1999 OF 2ND RESPONDENT FOR THE YEAR 1992-93.

EXT.P11 TRUE COPY OF THE NOTICE DATED 3.12.1999 OF 2ND RESPONDENT FOR THE YEAR 1984-85 TO 1992-93.

EXT.P12 TRUE COPY OF THE REPLY DATED 14-1-2000 FILED BEFORE 2ND RESPONDENT.

EXT.P13 TRUE COPY OF THE ORDER DATED 31.1.2000 OF THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

O.P.NO.19487 OF 2000

Dated this the 16th day of January, 2015

J U D G M E N T

The 1st petitioner, who was engaged in the business of works contracts, was an assessee on the files of the 2nd respondent during the assessment years 1984-85 to 1992-93. By an order dated 26.11.1998, the 2nd respondent found the petitioner liable to pay interest under Section 23(3) of the Kerala General Sales Tax Act, hereinafter referred to as the 'KGST Act', for the assessment years referred to above. Although by Ext.P1 application dated 29.4.1999, the petitioner applied for a waiver of interest in terms of Section 23A of the KGST Act before the 2nd respondent, the said request was not acceded to by the 2nd respondent. In the meanwhile, however, the petitioner had effected payments of tax and interest, with the expectation that in terms of Section 23A of the KGST Act as it then stood, it would be entitled to the benefit of waiver of interest for the assessment years in question. While so, the Finance Bill, 1998 came into force modifying Section 23A to take away the benefit of interest waiver to companies, other than those who were classified as small scale industries. In view of the subsequent amendments therefore the petitioner became disentitled to the benefit of interest waiver under Section 23A of the KGST Act. Consequently, Exts.P3 to P10 demand notices were issued by the respondents for the period from 1984-85 to 1992-93. The consequential demand on the petitioner came to an amount of approximately Rs.33,91,372/-. Almost immediately thereafter, by Ext.P11 communication dated 3.12.1999, the petitioner was informed by the 2nd respondent that its applications claiming benefit under Section 23A could not be maintained. Although the petitioner by Ext.P12 reply, dealing with Ext.P3 to Ext.P10 notices served on him, reiterated its claim for the benefit of Section 23A, by Ext.P13 order dated 2.2.2000, the 2nd respondent found that insofar as the petitioner was not a small scale unit, it was not eligible for the benefit of the amnesty scheme under Section 23A. In the original petition, Ext.P13 order of the 2nd respondent is impugned.

2. Statements have been filed on behalf of the 2nd respondent on two occasions pursuant to directions from this Court. The said statements deal with the computation of the liability of the petitioner at various stages during the pendency of the original petition before

this Court, when there were amnesty schemes that were brought out by the State Government under the KGST Act. It is not in dispute that the petitioner did not choose to avail the benefit of any of these schemes when the opportunity was there for availing the benefit of the schemes during the pendency of the original petition. It is now stated that there is no amnesty scheme presently available, for the benefit of which the petitioner can now apply.

3. I have heard Sri.S.Soman, the learned counsel appearing for the petitioner as also Smt.Lilly.K.T., the learned Government Pleader appearing for the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the challenge in the original petition against Ext.P13 order is premised primarily on the contention that the petitioner had submitted applications for the benefit of Section 23A of the KGST Act at a time when the provisions were capable of an interpretation that they would be applicable to all companies, and not just companies that were classified as small scale industrial units. The fact remains however, that while the

applications preferred by the petitioner for the benefit of Section 23A were pending consideration, the section itself was amended and the amended provisions made it clear that the benefit of the provisions would not be available to those companies that were not classified as small scale industrial units. It is not in dispute that the petitioner company is not a small scale industrial unit. In that view of the matter, the findings in Ext.P13 order that the petitioner is not entitled to the benefit of Section 23A of the KGST Act cannot be said to be illegal. The writ petition, in its challenge against Ext.P13 order of the 2nd respondent must necessarily fail, and it is hence dismissed.

5. Learned counsel for the petitioners would submit that, pursuant to Ext.P1 application preferred by the petitioner seeking the benefit of Section 23A of the KGST Act, and on the assumption that it would apply in the case of the petitioner company as well, certain payments have been made to the respondents. The petitioner apprehends that the respondents may not have given due credit to the said payments made by the petitioner. Taking note of the said submission, I make it clear that, before proceeding to raise any demand on the petitioner company, the respondents shall give credit

to all the payments made by the petitioner company in Ext.P2.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp

A.K.JAYASANKARAN NAMBIAR, J.

O.P.NO.19487 OF 2000

J U D G M E N T

16th day of January, 2015