IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

RSA.No. 71 of 2015

AS 436/2012 OF SUB COURT, KANNUR DATED 31-07-2014
OS 462/2011 OF PRINCIPAL MUNSIFF COURT, KANNUR DATED 13-07-2012

APPELLANT(S)/APPELLANTS/DEFENDANTS IN O.S.:

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1. COMMERCIAL TAX OFFICER,
   II CIRCLE, THANA, KANNUR.

2. THE DISTRICT COLLECTOR,
   KANNUR.

BY GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKAN

RESPONDENT(S)/RESPONDENT/PLAINTIFF IN O.S.:

B.ABDUL HAMEED, AGED 78 YEARS,
S/O.ABDUL RAHEEM, RESIDING AT SAJ,
NEAR K.S.E.B. ERIPURAM, P.O., PAZHAYANGADI,
KANNUR-670001.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

P.B.SURESH KUMAR, J.

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R.S.A.No.71 of 2015.

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Dated this the 30th day of September, 2015.

<u>J U D G M E N T</u>

The defendants in the suit are the appellants.

2. The plaintiff was an assessee under the Kerala General Sales Tax Act. According to the plaintiff, the assessment made on him by the authorities under the said Act for the year 1996-1997 was challenged by him and as per order dated 20.11.2003, the second appellate authority modified the assessment. The case of the plaintiff is that in the light of the order issued by the second appellate authority, he was entitled to refund of a sum of Rs.41,421/- paid by him by way of tax. It is alleged that the amounts due to him by way of refund was disbursed to him only on 5.5.2011. According to the plaintiff, he is entitled to interest for the amount refunded to him for the period from 20.11.2003 to 5.5.2011 and hence the suit. The suit was

resisted by the defendants contending that the amounts became due only when the assessment was revised by the assessing authority pursuant to the decision of the second appellate authority and that the amounts due was disbursed immediately on revising the order of assessment. It was also contended by the defendants that the documents required to pass the revised assessment order were produced by the plaintiff only in response to the letter addressed by the first defendant dated 3.3.2011 and the revised assessment order was passed on 10.3.2011 itself. In other words, according to them, there was no delay at all in passing the revised assessment order and disbursing the amounts due by way of refund. The trial court rejected the contention of the defendants and decreed the suit, granting to the plaintiff interest for the amounts due by way of refund as provided for under Section 44 of the Kerala General Sales Tax Act. The appellate court, on reappraisal of the evidence on record, confirmed the decision of the trial court. The defendants who are aggrieved by the decisions of the courts below have thus come up in this Second Appeal.

3. Heard the learned Government Pleader for the appellants.

4. Ext.A7 is the decision of the second appellate authority. Ext.A7 decision was rendered on 20.11.2003. The revised assessment order was issued by the first defendant only on 10.3.2011. The courts below found on facts that the plaintiff was not required to produce any documents to enable the assessing authority to pass the revised assessment order and to order refund of the excess amount paid by way of tax. The courts below also found that there was absolutely no justification for the delay of seven years in passing the revised assessment order. It is in the said circumstances, the suit was decreed directing the defendants to pay interest to the plaintiff for the amount due to him by way of refund.

5. The learned Government Pleader contended that the suit is barred by Section 49 of the Kerala General

Sales Tax Act. Section 49 of the Kerala General Sales Tax Act reads thus:

> "No suit or other proceedings shall except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made under this Act or any proceedings under this act for the recovery of any tax or other amount due under this Act or to stay any such proceedings or recovery."

The present suit is not one instituted to set aside or modify any assessment made under the said Act or any proceedings under the Act for recovery of any tax or other amounts due or to stay any such proceedings or recovery. As such, accordingly to me, the bar under Section 49 of the Kerala General Sales Tax Act does not apply to the present suit. There is, therefore, no merit in the Second Appeal and the same is accordingly, dismissed *in limine*. All the interlocutory applications in this appeal are closed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.