IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WP(C).No. 853 of 2008 (B)

PETITIONER:

FARAS INFO-TECHS PRIVATE LIMITED,
39/2046, OPP. DWARAKA HOTEL, M.G. ROAD,
ERNAKULAM, REPRESENTED BY ITS DIRECTOR
AVINASH V.SARAF.

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENT(S):
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1. THE ASSISTANT COMMISSIONER (ASSESSMENT),
   SPECIAL CIRCLE-II,
   DEPARTMENT OF COMMERCIAL TAXES,
   ERNAKULAM.

2. THE DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SMT.LILLY.K.T

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 853 of 2008 (B)

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1 : TRUE COPY OF THE MODIFIED ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR THE YEAR 1992-93 DATED 5.3.1999.

EXT. P2 : TRUE COPY OF THE JUDGMENT IN O.P.NO.4497 OF 1994 DATED 21.12.1998.

EXT. P3 : TRUE COPY OF THE REVISED ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT UNDER S.43 FOR THE YEAR 1997-98 DATED 12.4.2002.

EXT. P4 : TRUE COPY OF THE MODIFIED ASSESSMENT ORDER PASSED UNDER KGST ACT DATED 30.3.05 FOR THE YEAR 1999-2000.

EXT. P5 : -DO- -DO- UNDER CST ACT

EXT. P6 : -DO- -DO- UNDER KGST ACT DATED 10.1.05 FOR THE YEAR 2000-01.

EXT. P7 : -DO- -DO- UNDER CST ACT.

EXT. P8 : TRUE COPY OF THE ASSESSMENT ORDER PASSED FOR THE YEAR 2001-02 UNDER KGST ACT DATED 31.7.04.

EXT. P9 : -DO- -DO- UNDER CST ACT.

EXT.P10 : -DO- -DO- FOR THE YEAR 2002-03 UNDER KGST ACT DATED 29.10.04.

EXT.P11: -DO- -DO- UNDER CST ACT.

EXT. P12 : TRUE COPY OF THE COVRING LETTER FOR PAYMENT OF DEMAND AS PER EXT. P8 DATED 16.8.04.

EXT.P13: APPLICATION MADE BY THE PETITIONERS TO THE 1ST RESPONDENT DATED 27.4.2002.

EXT.P14: -DO- -DO- DATED 30.3.07.

EXT.P15: -DO- -DO-

EXT.P16: -DO- -DO-

EXT.P17: TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT DIRECTING TO APPEAR FOR A PERSONAL HEARING DATED 9.4.07.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.853 of 2008

Dated this the 4th day of June, 2015

J U D G M E N T

The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003 ('KVAT Act' for short) and the Central Sales Tax Act, 1956 ('CST Act' for short) and also under the Kerala General Sales Tax Act, 1963 ('KGST Act' for short). The petitioner has approached this Court with the following prayers :

> (a) issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to refund the excess amounts payable to the petitioners as per Ext.P-1, P-3 to P7 assessment orders and P-2 judgment, together with interest as provided under law, after setting off the debts of the petitioners as per Ext.P8 & P-10 forthwith;
>
> (b) declare that no penal interest is leviable on the balance of demand of tax as per Ext.P-8 & P-10 assessment orders, when substantial amounts were there with the department to reimburse to the petitioners;
>
> (c) issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to consider and pass appropriate orders on Ext.P-13 to P-16 immediately;

2. The learned counsel for the petitioner submits that, the petitioner is entitled for refund of excess payment of tax under KGST and CST Acts amounting to a sum of ₹20,52,176/- as evidenced by Exts.P1, P3 to P7 assessment orders and Ext.P2

judgment. It is also submitted that, the amount is pending with the 1st respondent for long.

3. The learned Government Pleader in answer to the above relief submits that, if the petitioner produces proof of excess payment, necessarily refund order will be granted in the light of Exts.P1 to P7.

4. In regard to penal interest levied on Exts.P8 to P11 final assessment orders, I am of the view that, since the same has became final, this Court cannot interfere with levy of penal interest in those assessment orders.

In view of the facts and circumstances of the case, this writ petition is disposed of with the following directions :

1. The petitioner shall produce necessary evidence before the 1st respondent for refund. Thereupon, after adverting to Exts.P1 to P7, necessary orders shall be passed for refund within a period of two months from the date of receipt of a copy of this judgment.

2. The petitioner shall pay the amount, quantified as penal interest based on Exts.P8 to P11 as on 2008. This may be adjusted from the amount due to the petitioner by way of refund.

3. If the petitioner is entitled for refund as on

2008, after adjusting the liability of the petitioner as per Exts.P8 to P11 as on in the year 2008, the remaining amount alone need be refunded. The rights and liabilities of the petitioner has to be worked out as in the year 2008. If the petitioner is entitled for any refund amount after adjusting the liability of the petitioner as per Exts.P8 to P11, the same shall be released to the petitioner within a further period of three months with statutory interest.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV