IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WA.No. 1029 of 2015
IN WP(C).29074/2008

AGAINST THE JUDGMENT IN WP(C) 29074/2008 of HIGH COURT OF KERALA
DATED 19/02/2014

APPELLANTS/RESPONDENTS 1 TO 4 in WP(C):
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1. SECRETARY TO GOVERNMENT
TAXES (G) DEPARTMENT, GOVERNMENT OF KERALA
THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF EXCISE
EXCISE COMMISSIONERATE, STATE OF KERALA
THIRUVANANTHAPURAM.

3. THE ASSISTANT EXCISE COMMISSIONER
PALAKKAD DIVISION, PALAKKAD.

4. THE TAHASILDAR (RR)
VAIKOM, DISTRICT KOTTAYAM.

BY SR. GOVERNMENT PLEADER SRI. M. MOHAMMED SHAFI

RESPONDENT/PETITIONER:

RATNAKUMARI, W/O.CHANDRABOSE
CHIRAYIL HOUSE, TRIKOTHAMANGALAM P.O., KOTTAYAM.

R BY SRI.K.REGHU KOTTAPPURAM

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.

W. A. No.1029 of 2015

Dated this the 13th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

This writ appeal is filed by the State/Department against the judgment dated 19/02/2014 of the learned single Judge in W.P.(C) No.29074 of 2008, whereby the writ petitioner was granted the benefit of clause-5 of Ext.P9 Amnesty Scheme to the effect that in respect of arrears, if the defaulters had already satisfied the 'principal amount', the balance liability could only be 10% of interest that remained to be satisfied.

2. The factual position is that the respondent herein was a licensee under the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 (for short, the Rules) and was running toddy shops Nos.13, 33, 34, 43 & 46 during the year 1996-97 in Vaikom Range. The business that was being pursued

by the respondent involved inter-district transportation of toddy. In respect of such instances, an additional tax to the extent of 1% per bulk litre was sought to be imposed by the Government as per Ext.P1 G.O.(P) No.71/96/TD dated 29/03/1996. The correctness and sustainability of the said G.O. was sought to be challenged from different corners, but such challenge was repelled and the liability was upheld. Though the matter was taken up even before the Apex Court, interference was declined and the SLP was dismissed.

3. In pursuance to the above proceedings, revenue recovery steps were taken against the parties concerned including the respondent herein. The demand raised upon the respondent was to the tune of ₹2,88,000/- which was the principal amount to be satisfied. On receipt of the notice and pursuant to the coercive steps as above, the entire amount towards the principal portion, stands discharged/ satisfied as borne by Ext.P2. It was while so, that the authorities of the Department found that, as per the statute, particularly by virtue of Rule 6(29) of the Kerala Abkari Shops (Disposal in

Auction) Rules, 1974, all Abkari dues were to incur liability by way of interest to the tune of 18% and further as per Rule 6(25), the remittance, if at all, made shall be first adjusted against interest and only thereafter, it shall go to the principal portion. It is stated that the amount satisfied by the respondent towards the principal portion took four and a half years and huge liability was to be cleared towards interest. This was required to be cleared by raising demand to the tune of ₹ 3,82,172/- (₹2,81,180 + ₹1,00,992/-). The revenue recovery proceedings were sought to be challenged by filing W.P.(C) No.24413 of 2006, wherein an interim order of stay was granted. Later, the Government introduced Amnesty Scheme as per Ext.P9 dated 26/05/2008 and during the pendency of the above writ petition, the respondent sought for the benefit of the said Scheme by filing the said writ petition. This was directed to be considered as per Ext.P11 judgment dated 29/07/2008. Ext.P12 is the order passed on 21/08/2008 in this regard wherein the balance liability to be cleared by the respondent is shown as ₹2,81,180/- towards the 'principal amount' and ₹15,805/- towards 'interest' by virtue of clause-2 of Ext.P9 Scheme. The petitioner sought to challenge the said order by filing W.P.(C) No.29074 of 2008 specifically contending that the relevant clause applicable to the case was 'Clause-5' of Ext.P9 and not Clause-3. The matter was considered elaborately and the learned single Judge of this Court observed that, the writ petitioner having satisfied the entire principal amount, the balance liability could only be under Clause-5 and not Clause-3. The declaration as above, allowing the writ petition, is sought to be challenged by the State/Department contending that the liability has to be under Clause-3 and not Clause-5.

4. During the course of the hearing, the learned Government Pleader submits that the demand placed upon the respondent herein earlier, to the tune of ₹2,88,000/-, was only towards the 'principal amount' and that interest was not calculated at that point of time. By virtue of doubts expressed from different corners, it was clarified as per Ext.P5 G.O., that interest was to be paid in respect of the

additional tax liability as well. It was accordingly, that fresh demand was raised and by virtue of Rule 6(25) of the Rules, the remittances which were made by the respondent had to be adjusted initially against the interest portion and only the balance could be set off against the principal liability. This Court finds that there cannot be any dispute with regard to the liability to satisfy interest. The question is whether the respondent is entitled to have the benefit of Ext.P9 Scheme promulgated by the Government and if so, which clause is to be applied to work out the liability, if any. Clauses-3 and 5 of the aforesaid Scheme are extracted below:

> “3. For the arrears of the assessment years between 1996-97 and 1999-2000, 100% of the principal and 5% of the interest and penalty will have to be remitted.
>
> 5. In cases where principal has already been remitted and only interest remains, 10% of the interest only need be remitted.”

5. Coming to the case in hand, it is to be noted that the principal amount, admittedly, was to the tune of ₹2,88,000/- which was demanded earlier and the same was satisfied

completely by the petitioner as evident from Ext.P2 receipt. The factual position is conceded by the learned Government Pleader, to the effect that no amount is due from the respondent towards 'principal amount'. However, it is stated that, such demand raised at that point of time was by virtue of a mistake, which is now sought to be corrected. This Court finds it difficult to accept the said proposition. The particular facts and circumstances prevailing at that point of time attracted the attention of the Government and it was to put an end to the entire controversy, that Ext.P9 Scheme was introduced, giving benefit to the defaulters and more particularly, to the persons who had already satisfied the principal amount. In their case, a separate clause was introduced as Clause-5, specifying that in such cases, the amount to be satisfied towards interest could only be 10%. This Court finds that the respondent is entitled to have the benefit of Clause-5 of Ext.P9. It was accordingly, that the matter was considered by the learned single Judge who declared the position as above. This Court does not find any tenable ground to call for interference. The appeal is devoid of merit and it is dismissed accordingly.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE