IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WA.No. 1230 of 2014 IN WP(C).12853/2010

AGAINST THE ORDER/JUDGMENT IN WP(C) 12853/2010 DATED 31-10-2013

APPELLANTS/RESPONDENTS:
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1. THE SALES TAX OFFICER
(THE COMMERCIAL TAX OFFICER, VAT CIRCLE, KALPETTA)
OFFICE OF THE COMMERCIAL TAX OFFICER
VYTHIRI AT KALPETTA - 673 121.

2. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

RESPONDENT/PETITIONER IN WPC:

M/S. IDEAL TRADING COMPANY
HILL PRODUCE MERCHANT, MAIN ROAD, KALPETTA
WAYANAD DISTRICT - 673 121 REPRESENTED BY M.C.ABDURAHIMAN
MANAGING PARTNER.

R1 BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
R1 BY ADV. SRI.K.M.FIROZ
R1 BY ADV. SMT.M.SHAJNA
R1 BY ADV. SRI.S.KANNAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

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W.A.No.1230 of 2014

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Dated this the 30th day of October, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

1. Heard learned Senior Government Pleader and the learned counsel for the respondent.

2. Through Ext.P2 judgment, the Full Bench of this Court held that the respondent herein was entitled to claim exemption from tax under Section 5(3) of the Central Sales Tax Act in relation to penultimate purchase. Therefore, the Full Bench left open the issue as to the validity of S.R.O.No.1071/2011 and directed that the respondent herein shall be given the benefit of refund.

3. The learned single Judge has, through the judgment impugned in this appeal, held that the refund in terms of Section 44 will have to be released with interest at 10% per annum, which is

the statutory interest and that such interest would run after the expiry of 90 days from the date of Ext.P1 which is the order issued by the assessing authority following the appellate authority's decision.

4. In this appeal, the learned Senior Government Pleader argued that in terms of S.R.O.No.1071/11, the refund was not to be allowed and that issue was raised and challenged before this Court and the Department did not effect refund because of the pendency of that issue before the court. She further pointed out that when matters are pending before Appellate or Revisional Authorities, such period would also run to be recokened to determine the point of time from which the eligibility to interest accrues. For one thing, the Full Bench was called upon to decide the vires of S.R.O.No.1071/2011. That SRO was really inapplicable to the case of the respondent herein who claimed exemption on a ground referable to Section 5(3) of the CST Act. That was clarified and orders were issued through Ext.P2 judgment. That judgment does not, in any way, take away the statutory liability of the State to

refund the amount with effect from the date of Ext.P1 order. When 90 days lapsed, after Ext.P1 order, the self-working statutory imposition of interest at the rate of 10% per annum grew as an eligibility in favour of the assessee. For this reason, we see no error in the judgment of the learned single Judge either in law or on facts. The writ appeal, therefore, fails.

In the result, this writ appeal is dismissed.

sd/-
Thottathil B.Radhakrishnan, Judge

sd/-
Anu Sivaraman, Judge

sj

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P.A.TO JUDGE