IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 1499 of 2015 (J)

PETITIONER :

JOSE JOSEPH, PROPRIETOR,
T.V. HOUSE, KAVALAKKAL BUILDING,
WEST OF PITCHU IYER JUNCTION,
ALAPPUZHA-688 001.

BY ADV. SRI.V.DEVANANDA NARASIMHAM

RESPONDENT(S):
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1. THE ASSISTANT COMMISSIONER (ASSMT.),
SPECIAL CIRCLE, COMMERCIAL TAXES,
ALAPPUZHA-688 001.

2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ASRAMAM P.O., KOLLAM-691 002.

3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, STONE BRIDGE, ALAPPUZHA-688 011.

4. THE COMMISSIONER OF COMMERCIAL TAXES,
DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM-695 002.

R1 TO R4 BY GOVERNMENT PLEADER SMT. LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 1499 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF ANNUAL RETURN FOR 2005-06 DATED 28.04.06 FILED BEFORE 1ST RESPONDENT BY THE PETITIONER.

EXHIBIT-P2: TRUE COPY OF THE JUDGMENT DATED 08.10.13 OF THIS HON'BLE COURT IN WP(C) NO.6839 OF 2008.

EXHIBIT-P3: TRUE COPY OF THE MODIFIED ORDER FOR 2005-06 DATED 18.12.13 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT-P4: TRUE COPY OF MODIFIED ORDER FOR 2008-09 DATED 11/12/13 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT-P5: TRUE COPY OF DEMAND NOTICES DATED 18.01.14 AND 20.01.14 ISSUED BY 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT-P6: TRUE COPY OF THE APPLICATION DATED 01.01.15 FILED BEFORE 1ST AND 3RD RESPONDENT.

EXHIBIT-P7: TRUE COPY OF PRINT OUT TAKEN FROM THE WEBSITE KVATIS.

EXHIBIT-P8: TRUE COPY OF THE APPLICATION DATED 01.01.15 SUBMITTED BEFORE 1ST RESPONDENT BY THE PETITIONER.

EXHIBIT-P9: TRUE COPY OF THE REPLY DATED 07.01.15 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS:

EXHIBIT R1(A): TRUE COPY OF THE CIRCULAR NO.04/2012 OF THE COMMISSIONER OF COMMERCIAL TAXES.

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.1499 of 2015

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Dated this the 24th day of March, 2015

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

The grievance of the petitioner in the writ petition is that, although by Ext.P3 order of the assessing authority, the petitioner was entitled to a refund of an amount of Rs.2,58,186/-, the said amount has not been refunded to the petitioner till date, and further, the petitioner has been required to pay amounts to the department pursuant to assessment orders passed for subsequent period. The contention of the petitioner in the writ petition is essentially that, if the respondents are not refunding amounts to the petitioner, they are at least required to adjust the said amounts towards future liability of the petitioner, and demand only the balance amounts outstanding from him pursuant thereto, for the subsequent period.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and taking note of the averments in the counter affidavit filed on behalf of the 1st respondent where the entitlement of the petitioner, to a refund of the amounts mentioned in Ext.P3 order, is not in dispute, I direct the 1st respondent to refund the amount of Rs.2,58,186/- mentioned in Ext.P3 order to the petitioner, together with the interest that is payable on the said amount in terms of Section 89 (4) of the Kerala Value Added Tax Act. The 1st respondent shall compute the interest payable to the petitioner in terms of the aforementioned provision, within a period of two weeks from the date of receipt of a copy of the judgment. The payment of the refund amount, together with interest so computed, shall be made to the petitioner within an outer limit of one month from the date of receipt of a copy of this judgment.

It is stated by the learned Government Pleader that, pursuant to an interim order, the e-facility that was available to the petitioner under the Kerala Value Added Tax Act, which had been blocked by the respondents, was directed to be restored taking note of the fact that the petitioner was entitled to substantial amounts by way of refund. Inasmuch as by this judgment, I have directed the said amounts to be paid to the petitioner, a decision on whether or not the e-facility extended to the petitioner should be blocked in future has to be taken by the respondents after ascertaining whether the petitioner is in default of any tax amounts or not.

The writ petition is allowed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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