IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

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

WP(C).No. 6350 of 2008 (E)

PETITIONER(S):

M/S. GENERAL RUBBERS,
P.JOHN ZACHARIAH BUILDING, THIRUNAKARA,
KOTTAYAM-686 001, REPRESENTED BY ITS PROPRIETOR,
MR.GEORGE VARGHESE.

BY ADVS.SRI.JOSEPH KODIANTHARA
SRI.TERRY V.JAMES

RESPONDENT(S):
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1. **ASST. COMMISSIONER (KVAT),**
   COMMERCIAL TAXES, KOTTAYAM.

2. **COMMISSIONER OF COMMERCIAL TAXES,**
   TRIVANDRUM.

3. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY (TAXES), TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 6350 of 2008 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF CIRCULAR NO.2/2008 DTD.25.1.2008 ISSUED BY THE 1ST RESPONDENT.

EXT.P2: TRUE COPY OF VAT RETURN FOR 2005-06.

EXT.P3: TRUE COPY OF VAT RETURN FOR 2006-07.

EXT.P4: TRUE COPY OF NOTICE NO.32050243282C/05-06 DTD.4.2.2008.

EXT.P5: TRUE COPY OF NOTICE NO.32050243282C/06-07 DTD.4.2.2008.

EXT.P6: TRUE COPY OF NOTICE NO.32050243282C/07-08 DTD.5.2.2008.

EXT.P7: TRUE COPY OF REPRESENTATION DTD.16.2.2008 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P8: TRUE COPY OF LETTER DTD.18.2.2008 ISSUED TO THE 1ST RESPONDENT.

EXT.P9: TRUE COPY OF ASSESSMENT ORDER DTD.29.2.2008 FOR THE ASSESSMENT YEAR 2005-06 PASSED BY THE 1ST RESPONDENT.

EXT.P10: TRUE COPY OF ASSESSMENT ORDER DTD.29.3.2008 FOR THE ASSESSMENT YEAR 2006-07 PASSED BY THE 1ST RESPONDENT.

EXT.P11: TRUE COPY OF NOTICE OF DEMAND DTD.29.2.2008 FOR ASSESSMENT YEAR 2005-06.

EXT.P12: TRUE COPY OF NOTICE OF DEMAND DTD.31.3.2008 FOR ASSESSMENT YEAR 2006-07.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.6350 of 2008

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Dated this the 30th day of September, 2015

J U D G M E N T

The petitioner is engaged in the processing and sale of rubber, both locally and interstate. In the returns filed under the Central Sales Tax Act for the assessment years 2005-2006 and 2006-2007, the petitioner adjusted the input tax credit that was available in respect of material purchased by the petitioner, and used by him in the manufacture of tread rubber that was sold interstate, against the Central Sales Tax(CST) payable in respect of the interstate sale of tread rubber. The petitioner resorted to this adjustment of input tax credit in terms of Section 11(6) of the Kerala Value Added Tax Act (hereinafter referred to as the KVAT Act). Exts.P2 and P3 are the returns filed by the petitioner for the assessment years 2005-2006 and 2006-2007. On receipt of Exts.P2 and P3 returns, the respondents issued Exts.P4, P5 and P6 notices to the petitioner proposing to complete the CST assessments by disallowing the set off of CST against the input tax credit, on the ground that the petitioner had not produced Form-44, copy of the lorry receipts and Form 21J, along with the monthly returns that were filed by the petitioner for the aforementioned assessment years. The said notices were issued to the petitioner in the wake of Ext.P1 circular dated 25.01.2008, of the 2nd respondent, that found that there were several instances that had come to the notice of the 2nd respondent where persons had claimed adjustment of input tax credit against CST payable where the interstate sale transaction had not been proved before the revenue authorities. Ext.P1 circular was issued to safeguard the interest of the revenue, by checking a possible misuse of input tax credit available to dealers by erroneously adjusting the same in transactions that did not attract payment of tax under the CST Act. While the petitioner preferred detailed replies to Exts.P4, P5 and P6 notices, they also approached this Court through the present writ petition impugning Ext.P1 circular, since it was on the basis of the said circular that the respondents proposed to disallow the adjustments effected by the petitioner, of input tax credit against the CST dues payable for the assessment years 2005-2006 and 2006-2007. During the pendency of the writ petition, the respondents proceeded to pass final orders of assessment under the CST Act for the assessment years 2005-2006 and 2006-2007. The petitioner therefore amended the writ petition to produce Exts.P9 and P10 assessment orders under the CST Act for the assessment years 2005-2006 and 2006-2007 and also Exts.P11 and

P12 demand notices that were issued consequent thereto. The writ petition was also amended to incorporate challenges against the said orders and demand notices. Thus, in the amended writ petition, while Exts.P9, P10, P11 and P12 are impugned, there is also a challenge against Ext.P1 circular on the basis of which the respondents disallowed the claim for adjustment of input tax credit against the CST dues of the petitioner.

2. A counter affidavit has been filed by the respondents wherein at paragraph five, it is stated that, Ext.P1 circular of the 2nd respondent has been issued in terms of the provisions of the Act, and that, the said circular could not be said to be illegal or ultra vires in any manner.

3. I have heard the learned Senior counsel on behalf of the petitioner and the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, Ext.P1 circular of the 2nd respondent that insisted on a claim for adjustment of input tax credit against CST dues to be accompanied

by Form 21J and Form 44, which are prescribed for dealers claiming refund of input tax under Section 13(2) of the Kerala Value Added Tax Act read with Rule 46 of the Kerala Value Added Tax Rules, was essentially intended to ensure that input tax credit that was claimed, was set off only against tax actually paid on transactions that resulted in goods moving interstate. It is evident from Ext.P1 circular that there were several instances detected by the department where input tax credit available to a dealer had been sought to be adjusted against alleged CST dues in cases where the dealer was not able to establish the interstate movement of the goods, or the claim for payment of CST at concessional rate. The exercise of the 2nd respondent in issuing Ext.P1 circular, when viewed in the back drop of the object sought to be achieved namely, checking of tax evasion, cannot be said to be ultra vires or illegal since it is trite that a procedure, prescribed by the authority entrusted with the task of administration of a taxing statute, for the purposes of checking evasion of tax, will necessarily have to be construed as an exercise of power that is incidental to the taxing power, and to further the object of the taxing statute. I am therefore not impressed with the challenge in the writ petition against Ext.P1 circular of the 2nd respondent, and, therefore, dismiss the writ petition in its challenge against Ext.P1 circular of the 2nd respondent.

5. There is however another aspect to be considered in the present writ petition. While the claim of the petitioner for adjustment of input tax credit, against the CST paid during the assessment years 2005-2006 and 2006-2007, was proposed to be disallowed on the contention that the petitioner had not produced documents that would establish that the interstate sale transaction had actually materialised, I find from Exts.P9 and P10 assessment orders pertaining to the CST assessments for the assessment years 2005-2006 and 2006-2007 that it is not in dispute that, the transaction against which the petitioner had claimed an adjustment of input tax credit, had in fact materialised. As a matter of fact, there could not have been a levy of tax under the CST Act unless the an interstate sale transaction was found established. I also take note of the orders passed in relation to the petitioner for the assessment years 2005-2006 and 2006-2007 under the KVAT Act, which have been handed over at the time of hearing by the learned Senior counsel for the petitioner, wherein the eligibility of the petitioner for refund of the input tax credit that was adjusted by it against the CST dues for the very same assessment years has been recognised, with the qualification that the petitioner would be

entitled to the refund only if the petitioner paid the corresponding dues under the CST Act. The above findings in the assessment orders under the CST Act, as well as the KVAT Act for the assessment years 2005-2006 and 2006-2007, would clearly establish that it is not the case of the department that the interstate transactions, against which the petitioner had adjusted the input tax credit, did not actually materialise. Under the circumstances, I see no reason why the petitioner should not be permitted to claim adjustment of input tax credit that was available, against the CST dues that were found to be payable by him for the assessment assessment years 2005-2006 and 2006-2007. The possibility of evasion, that was apprehended by the respondents, and to check which, Ext.P1 circular was issued by the 2nd respondent, does not exist in the instant case going by the findings of the respondents themselves in the assessment orders referred to above. While upholding the validity of Ext.P1 circular therefore, I also quash Exts.P9 and P10 assessment orders under the CST Act for the assessment years 2005-2006 and 2006-2007, to the extent they deny the petitioner the claim for adjustment of input tax credit against the CST dues that were determined under the said orders. I also quash, Exts.P11 and P12 demand notices that were issued consequent to Exts.P9 and P10 orders, and direct the 1st respondent to complete the assessments of the petitioner under CST Act for the assessment years 2005-2006 and 2006-2007 afresh after extending the benefit of adjustment of input tax credit claimed by the petitioner during the said years against the CST dues that were confirmed against the petitioner for the said years. The 1st respondent shall pass consequential orders based on this judgment within a period of one month from the date of a receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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