IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WP(C).No. 4541 of 2015 (P)

PETITIONER(S) :

M/S.KERALA AGRO INDUSTRIES CORPORATION LTD.,
KISSAN JYOTHI, FORT, THIRUVANANTHAPURAM- 695 033,
REPRESENTED BY ITS ENFORCEMENT OFFICER AJITH KUMAR.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

RESPONDENT(S) :
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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.

2. THE ASST. COMMISSIONER (ASSMT),
SPECIAL CIRCLE, COMMERCIAL TAXES,
THIRUVANANTHAPURAM- 695 035.

3. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, THIRUVANANTHAPURAM- 695 035.

4. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF AGRICULTURE, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

BY GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 4541 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE LETTER DATED 07.03.2003 ADDRESSED TO THE 2ND RESPONDENT.

P2: TRUE COPY OF THE NOTICE DATED 12.03.2003 ISSUED BY THE 2ND RESPONDENT U/S.17(3) OF THE KGST ACT.

P3: TRUE COPY OF THE OBJECTION LETTER DATED 17.03.2003 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

P4: TRUE COPY OF THE ORDER OF ASSESSMENT DATED 18.03.2003 PASSED BY THE 2ND RESPONDENT FOR THE YEAR 1998-99.

P5: TRUE COPY OF THE ORDER DATED 28.11.2008, PASSED BY THE 3RD RESPONDENT IN STA 584/2003.

P6: TRUE COPY OF THE CHALAN DATED 22.07.2014 EVIDENCING PAYMENT OF ADMITTED TAX.

P7: TRUE COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 24.07.2014.

P8: TRUE COPY OF THE APPLICATION FOR CONDONATION OF DELAY DATED 24.07.2014.

P9: TRUE COPY OF THE ORDER DATED 25.08.2014 PASSED BY THE 3RD RESPONDENT IN STA 24/2014.

P10: THE TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.03.2001.

P10(A): THE TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.03.2003.

P10(B):THE TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.03.2005.

P10(C):THE TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.03.2007

P10(D):THE TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.03.2009.

P10(E):THE TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.03.2010

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.A.TO JUDGE

Msd.

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.4541 of 2015

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Dated this the 19th day of June, 2015

JUDGMENT

This writ petition is filed challenging an order passed in an application for condonation of delay filed along with appeal before the Deputy Commissioner(Appeals), Thiruvananthapuram under the Kerala General Sales Tax Act, 1963. The petitioner is a public sector undertaking. The petitioner ought to have filed the appeal on or before 24.4.2003. The petitioner filed appeal without deposit of admitted tax. Then the appeal was rejected for the reason of non-remittance of admitted tax. This was rejected as per order dated 28.11.2008. Thereafter, the petitioner filed a fresh appeal after curing the defect on 24.7.2014. Thus, there is a delay of around 4108 days in filing the appeal.

2. The petitioner submits that they being a public sector undertaking, due to financial constraints, they were depended upon the Government to come out the financial doldrums. It is submitted that if the delay is not condoned, it will adversely affect any attempt

of revamping the company. It is further submitted that they filed the appeal, originally, within the time and due to paucity of fund, they could not remit mandatory pre-deposit.

3. In this matter, a counter affidavit has been filed on behalf of the second respondent. It is contended that the petitioner has not explained the reasons for delay and mere financial constraints cannot be taken as a reason for delay.

4. The fact remains that the petitioner has filed appeal within time originally and the same was rejected on account of defect existed with institution of the appeal for want of pre-deposit. Thereafter, curing the defect, they filed the appeal again in the year 2014, there is a huge delay occurred. However, taking note of the fact that the petitioner is being a public sector undertaking and the latches in this case, essentially, because of financial constraints, as come out from the facts of the case. In that view of the matter, a lenient view is necessary.

5. However, as rightly pointed out by the learned Government Pleader that the petitioner have to pay the surcharge

to entertain the appeal. I am of the view, in such circumstances, the Assessing Authority shall calculate surcharge and interest due on the admitted tax and communicate the petitioner within two weeks. Thereafter, the petitioner shall pay the surcharge and interest within a further period of two months. If the petitioner deposits surcharge and interest, the appeal shall be restored to file.

In view of the facts and circumstances as above, the impugned order is set aside subject to the above conditions.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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