IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 12543 of 2010 (P)

PETITIONER(S):

MR.K.G. MATHAI, SAMKARATHIL STORES,
GENERAL MERCHANTS, ANCHAL -691 306.

BY ADVS.SRI.PREMJIT NAGENDRAN,
SMT.K.B.SUBHAGAMANI.

RESPONDENT(S):
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1. **THE COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAX OFFICE, ANCHAL.

2. **THE INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, KOTTARAKKARA.

BY GOVT. PLEADER SRI.R. RANJITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 12543 of 2010 (P)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE ORDER NO.32021415134/05-06 DATED 27/02/2006 ISSUED BY THE FIRST RESPONDENT.
EXT.P2	COPY OF THE MONTHLY RETUIRN FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 29/04/2006 FOR THE ANNUAL YEAR 2005-2006.
EXT.P3	COPY OF THE MONTHLY RETURN FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED NIL FOR THE ANNUAL YEAR 2006-2007.
EXT.P4	COPY OF THE DECLARATION LETTER SUBMITTED BY THE PETITIONER BEFORE THE ASSESSING AUTHORITY DATED 29/04/2006.
EXT.P5	COPY OF THE NOTICE NO.32021415134/07-08 DATED 06/02/2009 ISSUED BY THE FIRST RESPONDENT.
EXT.P6	COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 16/02/2009.
EXT.P7	COPY OF THE ORDER NO.32021415134/07-08 DATED 27/02/2009 ISSUED BY THE FIRST RESPONDENT.
EXT.P8	COPY OF THE REVENUE RECOVERY NOTICE NO.29/09-10 DATED 4TH AUGUST 2009, FOR THE YEAR 2007-2008.
EXT.P9	COPY OF THE RECEIPT EVIDENCING THE PAYMENT FOR THE YEAR 2007-2008 DATED 29/09/2007.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.12543 of 2010

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Dated this the 14th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P7 order passed by the 1st respondent denying the petitioner the benefit of carry forward of input tax credit pertaining to the previous return period. The reasons stated in Ext.P7 for not permitting the carry forward of the input credit of the previous return period is that there is no provision in the Kerala Value Added Tax Act to carry forward the excess credit available at the end of the year to the next return period. Counsel for the petitioner would submit that, by Ext.P1 order of the 1st respondent, there was a specific permission to carry forward the input credit for previous period, when the Kerala General Sales Tax Act was in force, to the subsequent return period when the Kerala Value Added Tax came into force. This practice was permitted even for the immediately succeeding years. It is also his contention that even if there was no carry forward that was permitted to the subsequent assessment year, the respondents were obliged to refund the amounts that could not be adjusted towards the output tax paid by the petitioner in any assessment year.

In a counter affidavit filed on behalf of the 1st respondent Ext.P7 order is sought to be justified , inter alia, on the ground that by a Circular No.09/2007, it was made clear that an application for refund for the period from 2005-2006, had to be preferred by 28.02.2007, and the petitioner had not filed such an application within the time stipulated. It followed, therefore, that he would not be entitled for a refund of the tax and consequently for an adjustment of the input tax credit outstanding, against the tax for the subsequent return period.

Counsel for the petitioner would point to Ext.P4 application for the assessment year 2005-2006 which was preferred before the respondents as early as on 29.04.2006, and therefore, well within the time that was stipulated in Circular.No.09/2007 that is mentioned in the counter affidavit. Taking note of this fact, while sustaining Ext.P7 order that is impugned in the present writ petition, I also make it clear that, the excess credit that was available to the petitioner at the end of the relevant assessment year shall be refunded to the petitioner forthwith. I make it clear that, if there are any amounts outstanding from the petitioner towards tax for any subsequent assessment year then the refund amounts due to the petitioner consequent to this judgment can be adjusted towards the said output tax outstanding from the petitioner. I also make it clear that, while carrying out the adjustments as aforesaid, the respondents shall not demand any interest due on the amounts shown in Ext.P7, for the period when the writ petition was pending before this Court. Further in view of the directions in this judgment, I formally quash Ext.P8 revenue recovery notice.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/14.10.15