

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 8923 of 2015 (M)

PETITIONER(S):

1. VIJAYA TRADING COMPANY,
AWD NO 22, MAIN ROAD, THALASSERY-1,
KANNUR, REPRESENTED BY PARTNER MAHESH KUMAR.
2. M.K. JAYARAJAN,
AWD NO 33, POOTHAPARA, KANNUR - 9.
3. PILAKKANDY MOHAMMED ALI & COMPANY,
WHOLESALE DEPOT NO. 25, MAIN ROAD, TELLICHERRY-1,
KANNUR, REPRESENTED BY MOHAMMED ALI.
4. SREE NARAYANA TRADERS,
AWD NO 23, PIER ROAD, THALASSERY - 670 101,
KANNUR, REPRESENTED BY PROPRIETOR P.V. JAYAKUMAR.
5. R.P. GOVINDAN & COMPANY,
WHOLE SALE DEALER, AWD NO 21, TELICHERY,
KANNUR DISTRICT, REPRESENTED BY ITS MANAGING PARTNER,
MURALI.
6. SRUTHI SREEJAYAN,
RATION WHOLESALE DEALER AWD NO 24, 45/1537, PIER ROAD,
THALASSERY - 670 101, KANNUR.
7. RAHMATHBI C.P.,
AWD NO 5, PAYYANUR, KANNUR DISTRICT.
8. K.MUHAMMED ALI,
AWD NO 31, CHERUTHAZHAM, KANNUR TALUK,
KANNUR DISTRICT.
9. P.V. SATHEESHAN,
RATION WHOLESALE DEALER, LICENCE NO 32, KANNAPURAM,
KANNUR DISTRICT.
10. P.T.KAMALAKSHAN,
AWD NO 9, PAYYANNUR, KANNUR DISTRICT.

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11. P.P. CHERLA MAMMED & COMPANY,
AWD NO 4, THALIPARAMBU, KANNUR DISTRICT,
REPRESENTED BY ITS PARTNER K. ABDUL JALEEL.
12. K.V. MUHAMMED KUNHI, AWD 7, TALIPARAMBA, KANNUR DISTRICT.
13. K.M. NARAYANAN, AWD NO 8, CHERUPUZHA, KANNUR DISTRICT.
14. P.K. HAMEED, AWD NO 29, THOTTADA, KANNUR DISTRICT.
15. A.P.M. NAZEER,
AWD NO 28, KUTHUPARAMBU, KANNUR DISTRICT.
16. A. SAJITHA,
AWD NO 13M, IRITTY, KANNUR DISTRICT.
17. A.P. MOHAMMED ASIF,
AWD NO 3, IRIKOOR, KANNUR DISTRICT.
18. E.K. SURESH BABU,
AWD NO 18 & 30, MATTANNUR, KANNUR DISTRICT.

BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENT(S):

1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
FOOD & CIVIL SUPPLIES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.
2. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO FINANCE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
3. THE COMMISSIONER,
FOOD & CIVIL SUPPLIES DEPARTMENT,
PUBLIC OFFICE BUILDING, OPPOSITE MUSEUM,
THIRUVANANTHAPURAM 695 001.
4. THE DIRECTOR,
FOOD AND CIVIL SUPPLIES DEPARTMENT,
PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM - 695 001.
5. THE DISTRICT SUPPLY OFFICER,
OFFICE OF THE DISTRICT SUPPLY OFFICE, KANNUR - 670 001.

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**6. THE FOOD CORPORATION OF INDIA,
REGIONAL OFFICE,
KESAVADASAPURAM 695 004, REPRESENTED BY ITS PRINCIPAL,
OFFICER AND REGIONAL GENERAL MANAGER.**

**7. THE DISTRICT MANAGER,
FOOD CORPORATION OF INDIA, KANNUR - 670 001.**

**R1 TO R5 BY GOVERNMENT PLEADER SRI.RINNY STEPHAN CHAMAPARAMBIL
R6 & 7 BY ADV. SRI.M.R.ANISON**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHBIIT P1 TRUE COPY OF COMMUNICATION DATED 19-03-2014.

EXHBIIT P2 TRUE COPY OF JUDGMENT DATED 22/8/2014 IN WPC 23537/2012.

**EXHBIIT P3 TRUE COPY OF LETTER DATED 24-04-2014 ISSUED BY THE
3RD RESPONDENT.**

EXHBIIT P4 TRUE COPY OF THE REPRESENTATION DATED 5-11-2014.

**EXHBIIT P5 TRUE COPY OF THE COMMUNICATION DTD.15.11.2014 ISSUED BY THE
5TH RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

EXT.R4(a): A TRUE COPY OF THE LETTER DTD.1.7.2011.

EXT.R4(b): A TRUE COPY OF RELEVANT PORTION OF THE AMENDMENT.

EXT.R4(c): PHOTOCOPY OF LETTER NO.1000/D2/10/F&CSD DTD.19.3.2014.

**EXT.R4(d): PHOTO COPY OF THE LETTER FORWARDED TO THE FOOD CORPORATION
OF INDIA.**

**EXT.R4(e): PHOTO COPY OF THE COMMUNICATION ISSUED TO FOOD CORPORATION
OF INDIA.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.8923 of 2015

Dated this the 26th day of May, 2015

JUDGMENT

Petitioners are authorised wholesale dealers. They say that in terms of Section 6(4) of the Kerala Value Added Tax Act, they are exempted from tax the goods specified in the first schedule. However, it is submitted that in contravention of the above provision, taxes have been collected from the petitioners. The petitioners also rely on a communication from the Secretary of the Government to the Commissioner of Civil Supplies dated 19.3.2014, wherein a direction was issued to refund the tax collected from the wholesale dealers. Some of the petitioners have made a representation before the 5th respondent by Ext.P4.

2. The petitioners approached this Court on account of non-consideration of the request for refund. The

petitioners rely on the judgments of this Court in W.P.(C) Nos.23537/2012 and 10890/2015, wherein this Court directed the authority to consider the request and refund the amount collected, if any, to the petitioners.

3. The learned Government Pleader points out that difficulty in considering the request of the petitioner. It is submitted that without co-operation of the Food Corporation of India (for short, "FCI"), it is not feasible to refund the amount. It is further submitted that the amount has to be quantified and verified and the details have to be given by the FCI.

Considering the facts and circumstances as above, following directions are issued:

1. The 5th respondent shall take necessary action to determine the amount due to the petitioners for refund of the same within a period of three months.

2. The petitioners shall file the details of the amount on which, they are entitled before the 5th respondent. This shall be done within one month.
3. The 6th respondent shall co-operate with an enquiry being conducted by the 5th respondent.
4. If any notice is received from the 5th respondent, 6th respondent shall furnish the details requested by the 5th respondent.
5. It is made clear that if the amount has been already quantified, further enquiry is not necessary.
6. Based on decision, refund shall be effected within a further period of two months.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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