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. 15311 of 2015 (L)
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PETITIONER(S) :

MONDELEZ INDIA FOODS LIMITED,
(FORMERLY CADBURY INDIA LIMITED),
THRIKKAKARA PIPE LINE JUNCTION,
THRIKKAKARA POST, COCHIN- 682 021,
REPRESENTED BY ITS AUTHORISED SIGNATOR K.P MAGUDAPATHY,
SENIOR MANAGER DOOR NO. 10F 208,
SREEVALSA RESIDENCY THUDIYALUR, COIMBATORE- 641 012.

BY ADVS.SRI.SHAJI THOMAS
SRI.BINU PAUL
SRI RAGHAVAN RAMABHADRAN

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

2. THE ASSISTANT COMMISSIONER(ASSESSMENT),
SPECIAL CIRCLE II, COMMERCIAL TAXES,
ERNAKULAM- 682 018.

BY GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 15311 of 2015 (L)
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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **TRUE PHOTOCOPY OF THE ORDER DATED 20/02/2014 IN O.T.REV NO.63/2012.**

EXT.P2: **TRUE PHOTOCOPY OF THE NOTICE DATED 07/07/2014 ISSUED BY THE 2ND RESPONDENT.**

EXT.P3: **TRUE PHOTOCOPY OF THE ORDER DATED 23/02/2015 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.15311/2015

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Dated this the 19th Day of June, 2015

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

The petitioner has approached this Court challenging Ext.P3 order passed by the Assistant Commissioner (Assessment), Special Circle-II, Commercial Taxes under Section 25(1) of the KVAT Act, 2003.

2. The grievance of the petitioner is that the impugned proceedings are passed without following the remand directions of this Court in O.T.Rev.No.63/2012. The main challenge in the writ petition is on the ground that the petitioner's evidence in the matter was not considered in spite of the specific direction of this Court in the O.T.Revision. Further, it is submitted that the field report referred in the

impugned order has not been given to the petitioner during the proceedings.

3. The issue pertains to the assessment year 2005-06 and it revolves around the inclusion of collection charges, freight, loading and unloading etc. on the purchase turnover of the petitioner alleging to be pre-sale expenses. The petitioner was served with a proposal notice to include the above charges which was confirmed by the Assessing Authority. The petitioner filed an appeal against the order of the Assessing Authority and the Appellate Authority set aside the said order. The Department challenged the order passed by the Appellate Authority before the Sales Tax Appellate Tribunal in appeal and the Tribunal allowed the tax appeal filed by the Revenue and remanded the issue to be decided afresh. Thereafter, the petitioner approached this Court in revision in O.T.Rev.No.63/2012. Therein, this Court remanded the matter back for assessment.

4. Essentially, the question is now centred around what constitutes sales price. According to the Assessing Authority all the pre-sale expenses are liable to be included and form part of sale price. This Court, while disposing O.T.Rev.No.63/2012, observed as follows:

> "We are of the opinion that Annexure-A2 agreement requires to be tested with actual facts disclosed from the material documents and other evidence deducible from the evidence to be collected from the petitioner and his Agents. If sale is effected for and on behalf of the petitioner at the moment or places where the cultivators or small dealers allegedly sold the coco beans to the Agents of the petitioner, certainly, all expenses like collection charges, (at any rate such of the said expenses incurred after the sale) freight charges, loading and unloading charges will come under the head of "post sale expenses" which are not liable to be included in the sale price. If not, certainly the same would fall under pre-sale expenses, which are liable to be included in the sale price."

5. The petitioner submits that in spite of production of evidence showing the nature of relationship with the agent, that was discarded or overlooked while concluding the assessment order. Petitioner further submits that in the impugned order a reference is made to the field report of the Intelligence Officer who made certain report regarding nature of collection of cocoa beans. He has reported that cocoa beans are collected in collection centre of Bharat Cocoa and not in the farmers premises as described by the assessee.

6. The learned Government Pleader submits that the Assessing Authority had verified the entire records including the agreement and came to the conclusion what constitutes sales price. As far as the field report is concerned, they submit that they are prepared to discard the same from the scope of consideration of the issue and that it was not based on the field report that the assessment has been made. The field report do

not want to be relied upon, it can be discarded from the scope of enquiry.

7. It is argued by the learned counsel for the petitioner that it is incumbent on the Assessing Authority to follow the procedures prescribed under Rule 10 of the Kerala Value Added Tax Rules, 2005 to determine tax. It is seen from the impugned order itself that an exercise was done to determine taxable turnover taking note of the selling price. The fact which is required for determination of selling price has been adverted to. The Assessing Authority, in fact, dealt with many aspects as to how sales price has to be determined. It was assessed that the assessee paid of agents commission inclusive of all other expenses like delivery charges, freight, handling charges etc. on per Kg.basis. In regard to the appreciation of the evidence produced by the petitioner, I am of the view that appreciation of evidence of the petitioner as such has been referred in the order to find the nature of relationship, while

appreciating the clauses of the agreement entered into with the agents, with the material facts, whether it is factually erroneous or not is a matter to be adjudicated invoking alternative remedy. Appreciation of an issue in a different perspective, cannot be said to hold that observance of principles of natural justice has been violated.

8. In view of the fact that the petitioner has an alternative remedy, I am of the view that this Court should not sit upon the assessment order, look into evidence and other aspects involved, to decide whether Ext.P3 decision is erroneous or not, unless the order is resultantly palpable, vitiating the procedures. In that view of the matter while declining jurisdiction, the petitioner is relegated to appellate remedy to redress his grievance against the order. To enable the petitioner to workout alternate remedy, all steps pursuant to Ext.P3 order shall be deferred for a period of two months.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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