IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 16052 of 2014 (F)

PETITIONER(S):

K.P.SIVANANDAN,
PROPRIETOR,
M/S. "CHOISONS", 4/137,
KANNUR ROAD, CALICUT - 673 001.

BY ADV. SRI.K.PRAVEEN KUMAR.

RESPONDENT(S):

1. STATE OF KERALA,
   REP. BY ITS SECRETARY,
   DEPARTMENT OF COMMERCIAL TAXES,
   SECRETARIAT, THIRUVANANTHAPURAM -695 001.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
   PUBLIC OFFICE BUILDING, VIKAS BHAVAN,
   THIRUVANANTHAPURAM - 695 001.

3. THE COMMERCIAL TAX OFFICER
   IIND CIRCLE, KOZHIKODE -673 006.

BY SENIOR GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-03-2015, ALONG WITH WPC. 19208/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

WP(C).No. 16052 of 2014 (F)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P-1: TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY HIS ASSOCIATION.

EXT.P-2: TRUE COPY OF THE REPRESENTATION SENT ON BEHALF OF M/S.CHOISONS BEFORE THE 3RD RESPONDENT DATED 26.7.2006.

EXT.P-3: TRUE COPY OF THE JUDGEMENT IN WPC 19577/2007 OF THIS HON'BLE COURT.

EXT.P-4: TRUE COPY OF THE JUDGEMENT IN WPC 36048/2007 OF THIS HON'BLE COURT.

EXT.P-5: TRUE COPY OF THE REQUEST SENT BY THE PETITIONER TO THE 3RD RESPONDENT DATED 6.6.2014.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). Nos. 16052 & 19208 of 2014

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Dated this the 12th day of March, 2015

JUDGMENT

As the issues involved in both these writ petitions are the same, they are taken up together for consideration and disposed by this common judgment.

2. The petitioners are petroleum dealers and members of "All Kerala Federation of Petroleum Traders", which is a registered association of petroleum dealers. The association had filed OP.No. 11471 of 1993, for and on behalf of the members, challenging the levy of registration fee, at the same rate on every renewal, as well as the levy of fee on slab basis. This levy of registration fee, in accordance with Section 14(5) of the Kerala General Sales Tax Act, (hereinafter referred to as 'KGST Act') was declared as invalid by the judgment of this Court in Kerala Electric Trade Association and Another v. State of Kerala and others **[2004 (12) KTR 114]**. During the period from 1993-1994 to 2003-2004, the petitioners had remitted the renewal fee at the rate applicable under Section 14 of the KGST Act as it then stood. Pursuant to the declaration of law by this Court, in the decision referred to above, the petitioners have approached this Court seeking the benefit of the said judgment, and a consequential refund of the tax erroneously paid

by them during the period between 1993-1994 to 2003-2004.

3. The prayer in the writ petition is opposed by the respondents, who take the stand that, inasmuch as the petitioners had not approached the court earlier, challenging the levy of registration fee, they could not claim benefit of the judgment of this Court declaring the provisions of Section 14 to be illegal. It is the further contention of the respondents that, when certain dealers, who were not parties in the litigation that culminated in the judgment referred to above, had approached this Court, seeking refund, a Division Bench of this Court had taken the stand that only such of those persons, who had approached the court challenging the levy, would be entitled to claim refund of the registration fee paid by them. It is also pointed out that subsequently, a learned Single Judge of this Court has taken the view that if the dealers, who subsequently approached the Court claiming refund, were members of the association that had challenged the levy itself in the proceedings that led to the decision referred to above, then, such persons also would be entitled to claim refund based on the law declared by this Court.

4. In the instant cases, it is pointed out that, although the petitioners claim to be members of the association, which was the party to the litigation that culminated in the decision in 2004 (12) KTR 114, they had not impleaded themselves as parties to the said litigation and, therefore, they would not be entitled to claim refund of the registration renewal fee paid by them during the period in question.

5. I have heard Sri.K.Praveen Kumar, the learned counsel appearing for the petitioner and also Smt.Sobha Annamma Eappen, the learned Government Pleader appearing for the respondents.

6. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that this is a case where the petitioners, who are stated to be members of the All Kerala Federation of Petroleum Traders, which was a party in the litigation that led to the decision in Kerala Electric Trade Association and Another v. State of Kerala and others **[2004 (12) KTR 114]**, where this Court declared the law with regard to the validity of Section 14, that required payment of registration fee by

dealers, as invalid, the petitioners would also get a right to claim refund of the amounts paid by them at a time when the provisions were in force, and prior to the declaration of invalidity of the provision by this Court. That apart, it is also trite that, when this Court declares the law through a judgment in rem, the intention is to give benefit to all similarly situated persons, irrespective of whether they had approached this Court or not. In a recent decision of the Hon'ble Supreme Court in State of Uttar Pradesh v. Arvindkumar Srivastava **[2015 (1) SCC 347]**, it was observed that when there is a pronouncement of a judgment in rem, an obligation is cast upon the authority concerned, to itself extend the benefit thereof to all similarly situated persons.

7. On the facts of the instant case, I am of the view that, inasmuch as the judgment of this Court in Kerala Electric Trade Association and Another v. State of Kerala and others **[2004 (12) KTR 114]** had the effect of declaring the provisions of Section 14 (5) as invalid, the benefit of that declaration has necessarily to enure to every person, who had paid the registration fee in accordance with the said section, prior to the declaration of its invalidity. In that view of the matter, therefore, the respondents

cannot be heard to say that the petitioners will not be entitled to a refund of the amounts paid by them during the period in question towards registration renewal fee. Accordingly, these writ petitions are allowed by holding the petitioners entitled to the refund of the registration renewal fee remitted by them, during the period from 1993-1994 to 2003-2004, in terms of Section 14 of the KGST Act as it then stood.

The petitioners shall approach the respondents, with details regarding the payments effected by them, and relevant documents to show that they were members of the All Kerala Federation of Petroleum Traders during the relevant period, so as to enable the respondents to process their applications for refund. The competent among the respondents shall, thereafter, take steps to pay the refund amounts to the petitioners, within an outer limit of three months from the date of receipt of a copy of this judgment. I make it clear that the petitioners will not be entitled to claim any amount by way of interest on the amounts so refunded to them. It is also made clear that the petitioners will, at the time of receiving the refund amount, furnish an undertaking to the respondents that in the event of the decision in Kerala Electric Trade Association and Another v. State of Kerala and others **[2004 (12) KTR 114]**, against which the State Government is stated to have filed an appeal before the Hon'ble Supreme Court, being reversed by the said Court, then the petitioners will refund the amounts received by them pursuant to this judgment forthwith, on a demand being served on them.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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