IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 29767 of 2004 (R)

PETITIONER(S) :

T.P.BALAKRISHNAN,
MANAGING PARTNER, VARIETY PHARMACEUTICALS,
P.B.NO.12, SHORNUR-679 122.

BY ADV. SRI.K.MANOJ CHANDRAN

RESPONDENT(S) :
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1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DEPUTY TAHSILDAR (RR),
OTTAPALAM.

3. THE ASSISTANT EXCISE COMMISSIONER,
EXCISE DIVISION, PALAKKAD.

BY GOVERNMENT PLEADER SMT.M.T.SHEEBA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 29767 of 2004 (R)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN CIVIL WRIT PETITION NO.19622 OF 2004 DATED 13.07.2004.

EXHIBIT P2: A TRUE COPY OF THE EXTRACT OF LOCAL AUDIT REPORT NO. SRA (HO)/IV/M & TP/207 DATED 31.01.1994 OF THE ACCOUNTANT GENERAL (A & E) KERALA, THIRUVANANTHAPURAM.

EXHIBIT P3: A TRUE COPY OF A DEMAND NOTICE NO.P7-2832/04 DATED 03.08.2004 BY THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT P4: A TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER PURSUANT TO A NOTICE RECEIVED FROM THE 3RD RESPONDENT.

EXHIBIT P5: A TRUE COPY OF THE ORDER NO.P7-2832/04 DATED 08.09.2004 PASSED BY THE 3RD RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE LICENSE ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P7: TRUE COPIES OF THE DEMAND NOTICES UNDER SECTION 34 AND 7 OF THE R.R.ACT ISSUED BY THE AUTHORIZED OFFICER DATED 10.11.2014.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 29767 of 2004

Dated this the 14th day of July, 2015

J U D G M E N T

The petitioner is a Managing Director of a Pharmaceuticals Company. Petitioner impugnes revenue recovery proceeding to recover the duty payable by the Company under the Medicinal and Toilet Preparations (Excise Duties) Rues 1956.

2. The levy is under Rule 6 of the above Rule. This was for the period of 01.04.1991 to 30.09.1993. This was demanded from the petitioner based on an audit report of the year, 1994. However, as per Ext.P3 dated 03.08.2004, the demand was made only in the year 2004.

3. Ext.P3 was challenged before this Court. This Court directed the authority to adjudicate the issue after considering Ext.P4 objection of the petitioner.

4. Thereafter, in compliance of the directions of this Court Ext.P5 order has been passed.

5. There is no dispute regarding determination of levy. The learned counsel argued that the claim for the escaped

assessment is barred by limitation. It is further argued that no interest can be claimed by the State under the Rule in respect of the duty payable, if it is not paid within the time.

6. Rule 11 & 12 of the above Rule is provided for the recovery of duties. Rule 11 is relating to the recovery of short levy or recovery of the erroneous refunded amount. Rule 12 is relating to the residual power of recovery of the funds due to the Government. Rule 11 specifically provides a time limit of 6 months from the date on which the duties or charge was paid or adjusted in the owners account. However, Rule 12 does not provide for any limitation.

7. Learned counsel for the petitioner relying on the judgment of the hon'ble Supreme Court in **Government of India V. Citadel Fine Pharmaceuticals, Madras and Others (1989 KHC 943)** submits that, even though there is no limitation is prescribed nevertheless necessary anology has to be drawn from the purpose of limitation provided under Rule 11 and submits that hon'ble Supreme Court in the above judgment held that even though there is a period of limitation, the authority has to exercise the power within the reasonable period. No doubt, the first claim

is made after 10 years. It is to be noted that an audit report has been prepared way back in the year 1994 pointing out the escaped assessment. No reason has been sated for such a long delay involved in assessment. Therefore, the question is whether such a long delay would frustrate the claim of levy by the State. As pointed out in the hon'ble Supreme Court judgment itself, no hard and fast Rule can be laid down in determining the question of limitation. The liability of the petitioner is not erased on account of lapse of time. However, the same will have an effect while considering the question relating to interest claimed by the State. It is also to be noted that there is no provision in the Rule claiming for the interest.

8. In such circumstances, I am of the view that the petitioner is liable to pay the amount assessed as Rs.1,03,579/- excluding the interest.

9. Learned counsel for the petitioner submits that, he may be given instalment facility to pay the amount. Accordingly, following directions are issued:

(i) Petitioner shall pay a sum of Rs.1,03,579/- in 4 monthly instalments starting from 29.07.2015.

(ii) It is made clear that respondents will not be entitled for interest on the amount due.

This writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

Pn