IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 20385 of 2013 (W)

PETITIONER:

M/S.STERLING AND WILSON POWERGEN P.LTD.
FIRST FLOOR, KRISHNA TOWERS, THRIKKAKARA POST
ERNAKULAM-682021
REPRESENTED BY ITS ACCOUNTANT MR.SREEKUMAR T.S.

BY ADV. SMT.K.LATHA

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

2. **COMMERCIAL TAX INSPECTOR**
   COMMERCIAL TAX CHECK POST, MUTHANGA.

3. **COMMISSIONER**
   DEPARTMENT OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

R1-R3 BY SENIOR GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 20385 of 2013

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1:COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER DATED 12.4.2011.

EXT.P2:COPY OF THE CIRCULAR NO.50/2006 DATED 18.12.2006 ISSUED BY THE FOURTH RESPONDENT.

EXT.P3:COPY OF THE NOTICE NO.AT/2013-14 DATED 8.8.2013 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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W.P.(C). No.20385 OF 2013

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Dated this the 2nd day of June, 2015

<u>JUDGMENT</u>

Petitioner is challenging Ext.P3 notice by which the Commercial Tax Inspector has directed to remit advance tax on the consignment covered by the notice. According to the petitioner the consignment contains only generator spare parts and advance tax demanded at the rate of 5% is not liable to be paid. Petitioner relies on Ext.P2 Circular and submits that generator sets either in assembled form or un-assembled form are different from spare parts of the generator sets and advance tax is not payable for spare parts of generator sets.

2. On the basis of the interim order the petitioner got the consignment released by furnishing a bank guarantee.

3. 2nd respondent has filed a counter affidavit stating that the commodity covered by Ext.P3 was found to be

generator parts and not generator spare parts and as per the prevailing rules it requires payment of advance tax as demanded.

4. But the counsel for the petitioner submits that they are dealing with only generator spare parts and not assembled or un-assembled parts.

5. As the 2nd respondent also admits that advance tax is not payable for spare parts of generators, no interference by this court is found necessary.

6. It is up to the petitioner to convince the authorities regarding the nature of consignment at the time of adjudication, for which the petitioner will be given opportunity.

Accordingly, this writ petition is disposed of.

Sd/-
P.V.ASHA, JUDGE

SKV