IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 19236 of 2014 (D)

PETITIONER :

M/S.HEALTH CARE DIAGNOSTIC CENTRE,
TC.26.875, PANAVILA JN., THYCAUD POST
THIRUVANANTHAPURAM-695014
REPRESENTED BY ITS ADMINISTRATOR,
KUNJUKRISHNA KURUP, S/O.RAMAN PILLAI.

BY ADVS.SRI.SEBASTIAN JOSEPH (KURISUMMOOTTIL)
SRI.JOHNSON K.KURIEN
SRI.P.S.PRASAD

RESPONDENTS :
----

1. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES DEPARTMENT,
THIRUVANANTHAPURAM-695001.

2. COMMERCIAL TAX OFFICER,
1ST CIRCLE, THIRUVANANTHAPURAM-695001.

R1 & R2 BY GOVERNMENT PLEADER SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 19236 of 2014 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE LATEST MEMBERSHIP CERTIFICATE DATED 12/05/2014 ISSUED BY THE EXECUTIVE BOARD OF HEALTH MINISTERS COUNCIL IN FAVOUR OF THE PETITIONER'S FIRM.

EXHIBIT-P2: TRUE COPY OF THE LATEST AUTHORIZATION LETTER ISSUED BY THE STATE POLLUTION CONTROL BOARD DATED 6/4/2014.

EXHIBIT-P3: A TRUE COPY OF THE PROCEEDINGS IN CONNECTION WITH RELEASING ORDER NO.OR.1647/28/11 DATED 4/3/2011 IN FAVOUR OF THE PETITIONER FIRM HEALTH CARE DIAGNOSTIC CENTRE.

EXHIBIT-P4: A TRUE COPY OF THE NOTICE DATED 9/6/2011 ISSUED TO THE PETITIONER FIRM M/S.HEALTH CARE DIAGNOSTIC CENTRE.

EXHIBIT-P5: A TRUE COPY OF THE PROCEEDINGS AND ORDER NO.OR/1647/10-11 DATED 23/11/2011.

EXHIBIT-P6: TRUE COPY OF THE APPELLATE ORDER IN KVATA NO.302/11 DATED 30/11/2012.

EXHIBIT-P7: A TRUE COPY OF THE PROCEEDINGS WITH ORDER NO. OR/1647/2011 DATED 25/6/2013 ISSUED TO PETITIONER FIRM M/S.HEALTH CARE DIAGNOSTIC CENTRE.

EXHIBIT-P8: A TRUE COPY OF THE REPRESENTATION DATED 10/1/2014.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) No.19236 of 2014 (D)

..

Dated this the 14th day of January, 2015

JUDGMENT

The petitioner approaches this Court, through the present writ petition, seeking a direction to the second respondent to consider Ext.P6 appellate order and Ext.P7 refund order, passed in his favour, and refund the amounts collected from him by way of security deposit, pursuant to a detention of goods transported at his instance, at the check post.

2. When the matter was taken up for hearing, it is pointed out by the learned counsel for the petitioner that, the refund amount sanctioned as per Ext.P7 order was paid to him on 21.08.2014. The limited prayer of the petitioner at this stage, therefore, is for a direction to the respondent to pay interest in accordance with Section 89 of the Kerala Value Added Tax Act, 2003, on the delayed refund of amounts that were due to the petitioner.

3. I have heard Sri.Sebastian Joseph Kurisumoottil, learned counsel for the petitioner and Smt.Lilly.K.T., learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that in terms of Section 89 of the Kerala Value Added Tax Act, 2003, when an

assessing authority receives an order from the appellate or revisional authority to make a refund of tax or penalty or cash security paid by a dealer, it shall effect the refund to such dealer or such other person as the case may be. Section 89(iv) makes it clear that, if the refund under Section 89 is not made within 90 days of the date of completion of assessment or as the case may be within 90 days of the date of receipt of the order in appeal or revision or the date of expiry of the time for preferring an appeal or revision, the dealer shall be entitled to claim interest @ 10% per annum, on the amount due to him, from the date of expiry of the said period up to the date of payment or adjustment.

5. In the case at hand, the appellate order, by which the order of penalty passed against the petitioner was set aside and a direction was given to the lower authority to grant refund of the security deposit paid by the petitioner, was dated 30.11.2012. The consequential order of the second respondent giving effect to the said appellate order was dated 25.06.2013; and the refund in terms of the said order was given to the petitioner only on 21.08.2014. Thus, the petitioner is entitled to interest, on the delayed payment of the amount of Rs.1,65,000/-, for the period from February, 2013 to 21.08.2014. This interest is statutorily payable by the respondents in terms of Section 89 of the KVAT Act.

Accordingly, the writ petition is disposed with a direction to the second respondent to pay to the petitioner, the interest due as per Section 89(iv) of the KVAT Act, @ 10% per annum on the amount of Rs.1,65,000/-, for the period from February 2013 to 21.08.2014. The second respondent shall compute the amount due to the petitioner by way of interest, and pay the same to the petitioner, within a period of one month from the date of receipt of a copy of this judgment.

The writ petition disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/15/01/