IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 20666 of 2015 (G)

PETITIONER(S):

M/S.A.S. ENTERPRISES, 'KAREEM MANZIL',
MUSLIM STREET, ERNAKULAM, COCHIN - 682 035,
REPRESENTED BY ITS MANAGING PARTNER,
SRI.MOOSA A.SALYH.

BY ADV. SRI.TOMSON T.EMMANUEL.

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, 2ND CIRCLE,
   ERNAKULAM, COCHIN - 682 018

2. CLARIFYING AUTHORITY,
   OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWER, KARAMANA, THIRUVANANTHAPURAM - 695 033.

3. COMMISSIONER OF COMMERCIAL TAXES,
   TAX TOWER, KARAMANA,
   THIRUVANANTHAPURAM - 695 033.

BY SR. GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 20666 of 2015 (G)

APPENDIX

PETITIONER'S EXHIBITS:-

P1 - COPY OF ANNUAL E-RETURN DT. 28.04.2010 SUBMITTED FOR 2009-10 CLAIMING EXEMPTION ON MEDICINES, WHICH ARE SUFFERED WITH MAXIMUM RETAIL PRICE ON 1ST SALE WITHIN THE STATE.

P2 - COPY OF LETTER DT. 24.05.2012 SUBMITTED BY 1ST RESPONDENT AS A REPLY TO AUDIT ENQUIRY FOR 2009-10, SATISFYING THAT THE ITEMS SOLD BY PETITIONER ARE MEDICINES.

P3 - COPY OF NOTICE DT. 30.12.2014 U/S. 25(1) ISSUED TO THE PETITIONER BY 1ST RESPONDENT FOR 2009-10.

P4 - COPY OF REPLY DT. 19.01.2015 SUBMITTED BY PETITIONER BEFORE 1ST RESPONDENT AGAINST EXT. P3 NOTICE.

P4(A) - COPY OF REPLY DT. 28.01.2015 SUBMITTED BY PETITIONER BEFORE 1ST RESPONDENT IN CONTINUATION TO EXT. P4.

P5 - COPY OF TRUE COPY OF ORDER DT. 07.03.2015 SERVED TO THE PETITIONER ON 16.03.2015 BY 1ST RESPONDENT, COMPLETING THE ASSESSMENT AS PROPOSED IN EXT. P3.

P6 - COPY OF APPLICATION DT. 28.03.2015 SUBMITTED U/S. 66 OF THE KVAT ACT FOR RECTIFICATION OF MISTAKE IN EXT. P5 ORDER IN THE LIGHT OF DECISION IN KVATA NO. 2475/13 & 2753/13 DT. 31.03.2014.

P6(A) - COPY OF APPELLATE ORDER DT. 31.03.2014 IN KVATA NO. 2475/13 & 2753/13, PASSED BY ASSISTANT COMMISSIONER (APPEALS), ERNAKULAM, WHICH IS BINDING ON 1ST RESPONDENT.

P7 - COPY OF COPY OF LETTER NO. 32071606615/2009-10 ISSUED BY 1ST RESPONDENT IN REJECTING EXT. P6 APPLICATION, WITHOUT CONSIDERING EXT. P6(A) APPELLATE ORDER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 20666 of 2015

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Dated this the 10th day of July, 2015

J U D G M E N T

The Petitioner submitted Ext.P6 application before the 1st respondent under Section 66 of the KVAT Act for rectification of mistake in Ext.P5 order. The same was rejected as per Ext.P7.

2. The case of the petitioner is that, the rejection was done without considering Ext.P6(a) relating to assessment of the another dealer. It is submitted that the product referred in Ext.P6(a) is one and the same. Petitioner also relies on the Finance Act, 2011. By the Finance Act, Ayurvedic Cosmetics have been included in the 3rd schedule along with Serial No.36. The rate of tax applicable is 4%.

3. I am of the view that, the matter requires consideration in the light of the facts and circumstances as above. Accordingly, Ext.P7 is set aside. There shall be a direction to the 1st respondent to consider Ext.P6 after adverting to Ext.P6(a) as well as Finance Act, 2011 and after hearing the petitioner within a period of one month. Petitioner shall appear before the 1st respondent on 29.07.2015 at 11.00 a.m. Petitioner shall produce a copy of this judgment along with a copy of this writ petition before the 1st respondent.

This writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

Pn