IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 21084 of 2014 (I)

PETITIONER(S):

PREMIUM FERRO ALLOYS LTD.,
EDAYAR, BINANIPURAM,,
ALWAYE (REPRESENTED BY ITS MANAGING DIRECTOR
SHRI.S.S.AGARWAL).

BY ADVS.SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENT(S):
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1. STATE OF KERALA,
COMMERCIAL TAXES DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.
(REPRESENTED BY JOINT COMMISSIONER-I)

2.THE INTELLIGENCE OFFICER (IB), MATTANCHERY,
OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL
TAXES, ERNAKULAM - 682 013.

3.THE ASSISTANT COMMISSIONER (INSPG),
MATTANCHERY, COMMERCIAL TAXES,
ERNAKULAM- 682 013.

4.THE DEPUTY COMMISSIONER APPEALS
DEPARTMENT OF COMMERCIAL TAXES,
GOVT. OF KERALA, EDAPPALLY, KOCHI - 24.

5.THE APPELLATE ASSISTANT COMMISSIONER,
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, KANNUR AT ERNAKULAM - 682 013.

R BY GOVERNMENT PLEADER SRI.BOBY JOHN PULIKKAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.21084/2014

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 3.10.2003.

EXT.P2: COPY OF THE NOTICE ISSUED BY THE 5TH RESPONDENT DATED 13.11.2003.

EXT.P3: COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 18.11.2003.

EXT.P4: COPY OF THE ORDER IN APPEAL PASSED BY THE 5TH RESPONDENT DTED 15.1.2009.

EXT.P5: COPY OF THE LETTER DATED 25.3.2009 FOR REQUEST OF REFUND OF ENTRY TAX.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.21084 OF 2014 (I)

Dated this the 20th day of February, 2015

J U D G M E N T

The petitioner, who was served with a demand for entry tax to the tune of Rs.2,00,245/-, and also imposed with a penalty of Rs.4,38,868/-, in connection with an import of Furnace oil for its manufacturing process, challenged the levy of entry tax before the Appellate authority. The Appellate authority allowed the appeal in favour of the petitioner by Ext.P4 order dated 15.1.2009. It is the case of the petitioner that, consequent to the appeal being allowed by the Appellate authority, the petitioner became entitled to a refund of the entry tax and penalty amount paid by it, totalling an amount of Rs.6,68,954/-. The said amount, however, has not been refunded to the petitioner despite repeated requests and reminders sent to the respondents. It is under these circumstances that the petitioner has approached this Court for a direction to the respondents to refund the said amount of Rs.6,68,954/-, together with interest at the rate of 12% per annum from the date of payment of the amounts to the respondents till the date of actual refund of the said amounts to the petitioner.

2. I have heard Smt.Sathyashree Priya, the learned counsel appearing for the petitioner as also Sri.Boby Johon Pulickaparambil, the learned Government Pleader appearing for the respondents.

3. It is pointed out by the learned Government Pleader that in writ appeals that were filed by the assessees, against the judgment of a learned Single Judge declining the prayer for grant of refund, a Division Bench of this Court has taken the view that insofar as the State has preferred an appeal before the Supreme Court against the judgment in **Thressiamma L. Chirayil v. State of Kerala - [2007 (1) KLT 303],** the assessees must await the result of the said appeal before the Supreme Court, before getting a refund pursuant to claims made by them. In the instant case, however, I find that the petitioner is an assessee under the KVAT Act, and is paying tax on a regular basis on sales effected by it. Taking this fact into account, I direct the respondents to provisionally adjust the refund amounts that are due to the assessee, by way of entry tax and penalty amounts paid by it as detailed in Ext.P5, against the future tax demands raised on the

petitioner under the KVAT Act. It is made clear that in the event of a decision by the Supreme Court in favour of the assessee, it will be open to the petitioner to approach the respondents with a claim for interest on the delayed refund. If, on the other hand, the decision of the Supreme Court is against the assessee, then it will be open to the respondents to reclaim the amounts so adjusted from the assessee.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp