IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 21946 of 2015 (P)

PETITIONER(S):

MALABAR REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LIMITED
(M.R.C.M.P.U.LTD), (MILMA KASARAGOD DAIRY)
KASARAGOD DAIRY, ANADASHRAMAM P.O., KANHANGAD
REPRESENTED BY ITS MANAGER 9PP/P&M), MR.PREMLAL N.K

BY ADV. SMT.K.LATHA

RESPONDENT(S):
----

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ASSISTANT COMMISSIONER
KVAT SPECIAL CIRCLE, COMMERCIAL TAXES
KASARGODE - 671 121.

3. THE COMMISSIONER
COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4. THE INSPECTING ASSISTANT COMMISSIONER/
REVENUE RECOVERY OFFICER IN CHARGE
COMMERCIAL TAXES, KASARGODE - 671 121.

R BY GOVERNMENT PLEADER, SRI. RENJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21946 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - **THE TRUE COPY OFTHE REGISTRATION CERTIFICAE IN FORM 3 ISSUED UNDER SECTION 8 OF THE KERALA CO OPERATIVE SOCIETIES ACT 1969 ISSUED BY THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (DIARY), THIRUVANANTHAPURAM DT. 29.6.1989.**

EXT.P2 - **THE TRUE COPY OF THE ORDRE DT. 15TH FEBRUARY 2013 ISSUED BY THE PETITIONER'S KOZHIKODE OFFICE.**

EXT.P3 - **THE TRUE COPY OF THE AUDIT CERTIFICATE DT. 11.6.2015 ISSUED BYTHE ADDITIONAL DIRECTOR CO-OPERATIVE AUDIT, THIRUVANANTHAPURAM TO THE PETITIONER.**

EXT.P4 - **THE TRUE COPY OF THE PETITIONER'S KOZHOKODE BRANCH KVAT REGISTRATION CERTIFICATE IN FORM NO.4 WITH TIN NUMBER 3211022802 DT. 20.8.2007.**

EXT.P5 - **THE TRUE COPY OF THE PETITIONER'S KASARGODE DIARY, KANHANGAD BRANCH KVAT REGISTRATION CERTIFICATE IN FORM NO.4 WITH TIN NUMBER 32130678205 DT. 04.6.2007.**

EXT.P6 - **THE TRUE COPY OF THE PETITIONER'S KANNUR BRANCH KVAT REGISTRATION RENEWAL CERTIFICATE IN FORM NO. 1S WITH TIN NUMBER 32120250445 DT. 22.4.2014.**

EXT.P7 - **THE TRUE COPY OF THE PTITIONER'S ANNUAL RETURN IN FORM NO.10 DT. 25.05.2013 FOR THE EYAR 2012-2013 FILED BY THE PETITIONER.**

EXT.P8 - **THE TRUE COPY OF PRE-ASSESSMENT NOTICE DT. 07.5.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER U/S 25(1) OF THE KVAT ACT.**

EXT.P9 - **THE TRUE COPY OF REPLY DT.15.5.2015 FILED BY THE PETITIONER BEFORE SECOND RESPONDENT AGAINST P8 NOTICE.**

EXT.P10 - **THE TRUE COPY OF NOTICE DT. 28.5.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.**

EXT.P11 - **THE TRUE COPY OF THE ASSESSMENT ORDER NO. 32130678205/2012-13 DT. 25.6.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.**

EXT.P12 - **THE TRUE COPY OF THE DEMAND NOTICE IN FORM NO. 12 DT. 30.6.2015 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER BASED ON THE P11 ASSESSMENT ORDER.**

EXT.P13 - **THE TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DT. 14.7.2015.**

RESPONDENT'S EXHIBITS:-
--- **NIL**

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.
==
W.P.(C). No. 21946 of 2015
==
Dated this the 1st day of September, 2015

JUDGMENT

The petitioner, who is a Cooperative Society manufacturing milk products under the brand "MILMA", is aggrieved by Ext.P11 order of assessment passed by the 2nd respondent. In the writ petition, the challenge against Ext.P11 is essentially premised on the contention that, while pursuant to Ext.P8 pre-assessment notice, the petitioner had, by Ext.P9 reply, specifically taken the contention that the transaction effected between the various units of the petitioner society were not sale transactions so as to attract the levy of tax under the Kerala Value Added Tax Act (hereinafter referred to as the "KVAT Act"), in Ext.P11 order that was passed by the 2nd respondent, the said contention with regard to the taxability of the transaction has not been gone into. The petitioner also has a case with regard to the rate of tax applicable to the product in question even assuming that the transaction in question was a sale.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the

case and the submissions made across the bar, I find that in Ext.P11 order, there is no finding by the 2nd respondent, based on any valid material, as regards the nature of the transaction involved in the transfer of milk and other products between various units of the petitioner society. Inasmuch as the levy of tax is on the taxable event of sale, it is incumbent upon the assessing authority to first determine whether the transfer in question attracts the tax under the KVAT Act. For this purpose, the assessing authority would have to analyse the nature of the transaction and come to a definite finding as to whether it constitutes a sale and only thereafter proceed to determine the tax liability in respect of the said transaction. Inasmuch as the said exercise has not been done by the 2nd respondent in Ext.P11 order, I quash Ext.P11 order, as also Ext.P12 demand notice, and direct the 2nd respondent to reconsider the matter and pass a fresh assessment order in respect of the petitioner for the assessment year 2012-13. The 2nd respondent shall pass orders as directed, within a period of one month from the date of receipt of a copy of this judgment, after affording the petitioner an opportunity of being heard. It will be open to the petitioner to produce any material to substantiate his contention on merits before the 2nd respondent, at the time of hearing. The petitioner shall produce a copy of the writ petition together with a copy of this judgment before the 2nd respondent for further action.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das