IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).No. 26279 of 2015 (H)

PETITIONER(S):

M/S.PARLE AGRO PVT. LTD.,
5/188 MEPPARAMBA, PIRAYIRI P.O.,
PALAKKAD, HAVING ITS CORPORATE OFFICE AT
OFF WESTERN EXPRESS HIGHWAY, SAHAR - CHAKALA ROAD,
PARSIWADA, ANDHERI (E), MUMBAI - 400 099,
REPRESENTED BY ITS ASSISTANT VICE PRESIDENT TAXATION
KRISHNAN SHESHADRI.

BY ADVS.SRI.ARSHAD HIDAYATHULLAH (SR.)
SRI.PREMJIT NAGENDRAN
SRI.N.S.SHAJI

RESPONDENT(S):
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1. **ASSISTANT COMMISSIONER (ASSESSMENT),**
   SPECIAL CIRCLE, COMMERCIAL TAXES,
   PALAKKAD - 678 001.

2. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   TAX TOWERS, KARAMANAN,
   THIRUVANANTHAPURAM - 695 002.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 26279 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE TECHNICAL OPINION DATED 28.3.2005 ISSUED BY THE AUTHORITY UNDER FRUIT PROCESSING ORDER, 1995 I.E. DIRECTOR FOOD & VEGETABLE PROCESSING INDUSTRY.

EXT.P2: TRUE COPY PERMISSION GIVEN FOR MANUFACTURE, STORAGE AND SALE OR PRODUCT ISSUED BY CENTRAL LICENSING AUTHORITY UNDER LETTER DTD.19.8.2015.

EXT.P3: PHOTOCOPY OF THE TECHNICAL EXPERT OPINION ISSUED BY PROFESSOR DR.UDAY OF THE INSTITUTE OF CHEMICAL TECHNOLOGY DTD.11.6.2015.

EXT.P4: PHOTOSTAT COPY OF THE NOTICE NO.32090580088/2009-10 ISSUED BY THE FIRST RESPONDENT DTD.4.8.2015 FOR THE YEAR 2009-10.

EXT.P5: PHOTOSTAT COPY OF THE NOTICE NO.32090580088/2010-11 ISSUED BY THE FIRST RESPONDENT DTD.4.8.2015 FOR THE YEAR 2010-11.

EXT.P6: PHOTOSTAT COPY OF THE NOTICE NO.32090580088/2011-12 ISSUED BY THE FIRST RESPONDENT DTD.4.8.2015 FOR THE YEAR 2011-12.

EXT.P7: PHOTOSTAT COPY OF THE NOTICE NO.32090580088/ 2012-13 ISSUED BY THE FIRST RESPONDENT DTD.4.8.2015 FOR THE YEAR 2012-13.

EXT.P8: PHOTOSTAT COPY OF THE NOTICE NO.32090580088/2013-14 ISSUED BY THE FIRST RESPONDENT DTD.4.8.2015 FOR THE YEAR 2013-14.

EXT.P9: PHOTOSTAT COPY OF THE NOTICE NO.32090580088/2014-15 ISSUED BY THE FIRST RESPONDENT DTD.4.8.2015 FOR THE YEAR 2014-15.

EXT.P10: PHOTOSTAT COPY OF THE NOTICE NO.32090580088/2015-16 ISSUED BY THE FIRST RESPONDENT DTD.4.8.2015 FOR THE MONTH 4/15.

EXT.P11: PHOTOSTAT COPY OF THE NOTICE NO.32090580088/2009-10 ISSUED BY THE FIRST RESPONDENT DTD.4.8.2015 FOR THE MONTH 5/15.

EXT.P12: PHOTOSTAT COPY OF THE NOTICE NO.32090580088/2009-10 ISSUED BY THE FIRST RESPONDENT DTD.4.8.2015 FOR THE MONTH 6/15.

EXT.P13: PHOTOSTAT COPY OF THE APPLICATION WITH ANNEXURES FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DTD.25.8.2015.

EXT.P14: PHOTOSTAT COPY OF THE ACKNOWLEDGEMENT ISSUED BY THE OFFICE OF THE SECOND RESPONDENT EVIDENCING RECEIPT OF EXT.P13 DTD.25.8.2015.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26279 of 2015

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Dated this the 31st day of August, 2015

JUDGMENT

The petitioner, who is a dealer in Fruit Juice based drink products known as “Appy”, “Frooti”, “Appy Fizz” etc, is also registered as such under The Kerala Value Added Tax Act (hereinafter referred to as “the KVAT Act”). The issue involved in this writ petition pertains to the classification to be accorded to the drink “Appy Fizz” that is marketed by the petitioner. The petitioner has preferred Ext.P13 application for clarification, in terms of Section 94 of the KVAT Act, read with Rule 78 of the KVAT Rules, before the 2nd respondent. According to the petitioner, the application for clarification was necessitated in view of a decision of this Court in the judgment dated 17.11.2014 in O.T. Revision No. 114 of 2013 where, based on the material that was available before this Court in that case, this Court has taken a view that the product “Appy Fizz” would merit classification as an aerated branded soft drink and not as a fruit juice. It is the contention of the petitioner that the material, that was available before this Court in that case was not sufficient to determine the classification of the item and it is therefore, that they have preferred Ext.P13 application before the 2nd respondent for a clarification as regards the classification to be accorded to the item in question. In the writ petition, the petitioner is primarily aggrieved by Exts.P4 to P12 notices, that have been issued to him by the 1st respondent under Section 25(1)/ 22 of the KVAT Act, 2003 proposing an assessment of the sales turnover, by treating the commodity “Appy Fizz” as a branded aerated soft drink. It is the contention of the petitioner that, if the proceedings pursuant to Exts.P4 for to P12 are allowed to go ahead, without first obtaining a clarification with regard to the classification to be accorded to the product “Appy Fizz”, then it would seriously prejudice the interests of the petitioner, in that the petitioner would be assessed to tax at a higher rate as applicable to branded aerated soft drinks. The prayer in the writ petition is therefore, for a direction to the 2nd respondent to consider and pass orders on Ext.P13 application for clarification within a specified time frame, and to keep the proceedings initiated by Exts.P4 to P12 in abeyance, till such time as orders are passed by the 2nd respondent on Ext.P13 application.

2. I have heard Sri.Arshad Hidayathullah, the learned Senior Counsel, duly instructed by Adv. Premjith Nagendran, for the petitioner as also Sri. Liju V. Stephen, the learned Government Pleader for respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that the interests of justice would be served by directing the 2nd respondent to consider and pass orders on Ext.P13 application for clarification preferred by the petitioner, within a period of one month from the date of receipt of a copy of this judgment, after hearing the petitioner. It will be open to the petitioner to produce all material, on which he intends to place reliance to substantiate his contention with regard to the classification of the product in question, before the 2nd respondent. I make it clear that, till such time as orders are passed by the 2nd respondent on Ext.P13 application for clarification, and communicated to the petitioner, further proceedings pursuant to Exts.P4 to P12 notices shall be kept in abeyance by the 1st respondent.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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