IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 31086 of 2009 (E)

PETITIONER:

GEO STORES 1/524 PATTAMBI ROAD,
KUNNAMKULM, KERALA - 680503,
THROUGH ITS PROPRIETOR,
MR. P.T.JOHNSON.

BY ADVS.SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.JAWAHAR LAL

RESPONDENT(S):

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1. THE STATE OF KERALA,
   REPRESENTED BY THE SECRETARY,
   TAXES DEPARTMENT, GOVT. OF KERALA,
   THIRUVANANTHAPURAM.

2. COMMERCIAL TAX OFFICER,
   KUNNAMKULAM, KERALA-680503.

BY SENIOR GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015 ALONG WITH WPC.14149/2011 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 31086 of 2009 (E)

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1(A)&(B): TRUE COPY OF THE IMPUGNED ORDER FOR THE YEARS 2006-06 & 2006-2007 PASSED BY THE 2ND RESPONDENT.

EXT.P2(A)&(B): TRUE COPY OF DEMAND NOTICES DATED 19.9.2009 AND 23.9.2009

EXT. P3: TRUE COPY OF THE ORDER DATED JUNE 8, 2009 PASSED BY THE HON'BLE HIGH COURT.

EXT.P4(A)&(B): TRUE COPY OF THE SHOW CAUSE NOTICES NO.32081272244/2006-06 AND 32081272244/06-07 DATED 5.8.2009 ISSUED BY THE 2ND RESPONDENT.

EXT. P5: TRUE COPY OF THE REPLY DATED 16.9.2009 SUBMITTED BY THE PETITIONER.

EXT. P6: TRUE COPY OF THE LETTER BY WHICH THE COMPANY PAID REVISED RETURNS ON JANUARY 6, 2007.

EXT.P7(A)&(B)(C): TRUE COPY OF THE LETTERS DATED 8.2.2007, 8.3.2007 AND 8.4.2007.

EXT. P8: TRUE COPY OF THE ORDER DATED 7.4.2006 PASSED BY THE COMMISSIONER OF COMMERCIAL TAXES.

EXT. P9: TRUE COPY OF THE NOTICE DATED 25.4.2006 ISSUED BY THE DY.COMMISSIONER.

EXT. P10: TRUE COPY OF THE JUDGMENT DATED 27.11.2006 OF THE HON'BLE HIGH COURT.

EXT. P11: TRUE COPY OF THE JUDGMENT DATED 9.8.2007 OF THE HON'BLE HIGH COURT IN R.P.215/2007 &

EXT. P11: TRUE COPY OF THE ORDER DATED 18.1.2010 IN SLP 199966/2009 OF THE HON'BLE SUPREME COURT.

EXT. P12: TRUE COPY OF THE ORDER DATED 29.4.2008 OF THE SUPREME COURT IN SLP NO.6096/2007.

EXT. P13: TRUE COPY OF THE JUDGMENT DATED 17.12.2007 IN O.T.APPEAL NO.6/2006.

EXT. P14: TRUE COPY OF THE ORDER DATED 24.8.2009 PASSED BY THE HON'BLE SUPREME COURT.

EXT. P15: TRUE COPY OF THE DEMAND NOTICES DATED 5.12.2009 ISSUED BY INSPECTING ASST. COMMISSIONER, COMMERCIAL TAXES THRISSUR.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.Muhamed Mustaque, J.

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W.P. (C) Nos.31086/09, 14149 & 16475/11,
6250/12 & 23499/14

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Dated this the 4th day of August, 2015.

JUDGMENT

1. These writ petitions are filed by the petitioners, who are the manufacturers of Dettol and other household products, against the demand notices issued under the Kerala Value Added Tax Act, 2003, based on assessment orders. There is also challenge against the Rules framed under the KVAT Act in some of the writ petitions.
2. The writ petitioners challenge the said assessment and demand, on the ground that, Dettol is a medicament and the manufacturer had paid tax at the rate specified for residuary items and therefore Distributors should be allowed to take credit for such payment. Therefore, it is argued that the petitioners shall not be assessed again.
3. In fact, the issue is covered in favour of the petitioners by the decision of this court in W.P.(C) No.2487/10. Therefore, this court is of the view that, the petitioners are entitled to take credit for the

VAT paid by the manufacturer and no claim can be made against the petitioners. Therefore, the assessment orders are set aside to the above extent and it is ordered that, the petitioners have to be given credit of VAT paid by the manufacturer. The question, relating to the challenge made in respect of the Rules in W.P.(C)No.16475/11, 31086/09 and 14149/11, is left open.

Writ petitions are disposed of as above.

Muhamed Mustaque, Judge.

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