IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).NO. 30988 OF 2015 (W)

PETITIONER(S):

M/S. MARATT PLANTATIONS (P)LIMITED
MAMPAD P.O., MALAPPURAM DISTRICT, PIN - 676 542
REP. BY ITS MANAGING DIRECTOR -M.K.MARATTUKALAM.

BY ADV. SRI.M.KRISHNAKUMAR

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

2. ASSISTANT COMMISSIONER (KERALA VALUE ADDED TAX)
DEPARTMENT OF COMMERCIAL TAXES, SPECIAL CIRCLE
MALAPPURAM.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 30988 OF 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF THE JUDGMENT DT. 09.4.2012 IN WPC NO. 19110/2008.

P2 - TRUE COPY OF THE COMMUNICATION DT. 15.7.2014 FROM THE 2ND RESPONDENT.

P3 - TRUE COPY OF THE LETTER DT. 01.8.2014 ISSUED BY THE PETITIONER.

P4A TO P4L - TRUE COPY OF THE PURCHASE BILLS FOR THE 2003-2004.

P5A TO P5L - TRUE COPY OF THE SALE BILLS FOR THE YEAR 200 - 2004.

P6A TO P6L - TRUE COPY OF THE PURCHASE BILLS FOR THE YEAR 2004-2005.

P7A TO P7L - TRUE COPY OF THE SALE BILLS FOR THE YEAR 2004-2005.

P8 - TRUE COPY OF THE ASSESSMENT ORDER DT. 12.5.2015 FOR THE YEAR 2003-2004.

P9 - TRUE COPY OF THE ASSESSMENT ORDER DT. 12.5.2015 FOR THE YEAR 2004-2005.

P10 - TRUE COPY OF THE JUDGMENT OF THE HIGH COURT OF KERALA REPORTED IN 2002(1) KLT 234.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C).No.30988 of 2015

...

Dated this the 13th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P8 and P9 assessment orders passed against the petitioner for the assessment years 2003-2004 and 2004-2005. The grievance of the petitioner against Exts.P8 and P9 orders is that, although the Assessing Officer was directed to consider the entitlement of the petitioner for refund of tax paid under the Kerala General Sales Tax Act (hereinafter referred to as 'the KGST Act'), the assessing authority in Exts.P8 and P9 orders has denied the claim for refund, on the ground that, the petitioner had not succeeded in proving that there was no unjust enrichment that would result if a refund was granted to the petitioner. Although various contentions have been raised in the writ petition against Exts.P8 and P9 orders, I am of the view that, the petitioner has an effective alternate remedy by way of filing an appeal against the said orders before the appellate authority under the KGST Act. This is more so, because the issue involved in Exts.P8 and P9 involves an incursion into facts which this court cannot embark upon while exercising jurisdiction under Article 226 of the Constitution of India. While dismissing the writ petition in its challenge against Exts.P8 and P9 orders, therefore, I direct that if the petitioner files an appeal against Exts.P8 and P9 orders before the appellate authority under the KGST Act, within three weeks from today, after complying with the necessary formalities for maintaining the said appeal, then the appellate authority shall consider the appeals preferred by the petitioner and pass orders thereon.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/13.10.15