IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 31535 of 2015 (N)

PETITIONER(S):

K.RAMABHADRAN, NO.14,
PALM GREEN VILLA, 999 M 13, PONNURUNNY,
VYTTILA P.O., KOZHIKODE - 682 019.

BY ADVS.SRI.JOLLY JOHN
SMT.LIZA MEGHAN CYRIAC

RESPONDENT(S):
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1. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES , COMMERCIAL TAX COMPLEX,
PERUMANOOR P.O., KOCHI - 682 016.

3. COMMERCIAL TAX OFFICER,
COMMERCIAL TAX OFFICE, 2ND CIRCLE,
THRIPPUNITHURA - 682 301.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 31535 of 2015 (N)

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APPENDIX

PETITIONER(S)' EXHIBITS

P1:-A TRUE COPY OF THE JUDGMENT IN WA 1738/2013 DTD 18/11/2013 OF THE HON'BLE HIGH COURT OF KERALA.

P2:-TRUE COPY OF THE COMMUNICATION OF THE COMMERCIAL TAX OFFICER, KVAT CIRCLE II, TRIPUNITHURA DTD 12/6/2014, OF PAYMENT OF ONE CRORE RUPEES.

P3:-A TRUE COPY OF THE ORDER DTD 6/7/2015 PASSED BY THE 2ND RESPONDENT IN RP 648/2014.

P4:-THE TRUE COPY OF THE REPRESENTATION DTD 14/9/2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND AND 3RD RESPONDENT FOR REFUND OF THE ONE CRORE RUPEES

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C).No.31535 of 2015

...

Dated this the 9th day of December, 2015

J U D G M E N T

The petitioner in the writ petition is aggrieved by the inaction on the part of the respondents in refunding an amount of Rs.1 crore, that was paid by him during the pendency of penalty proceedings in which, ultimately, the order of the revision authority was in his favour, setting aside the order of penalty. The brief facts relevant for a disposal of the writ petition are as follows:

2. The petitioner had entered into an agreement with a company (Tecil) for purchase of scrap. Even prior to the said agreement with Tecil, the petitioner had identified a prospective purchaser, for the sale of the scrap that he was to procure from Tecil, and he entered into an agreement with the said prospective buyer - a person by name Manikandan. The scrap that was identified to be purchased by the petitioner from Tecil was found to be the subject matter of an attachment proceedings by the Tahsildhar for dues owing from the said company to various statutory authorities. On concluding the agreement with Tecil, the petitioner paid off the amounts due to the various statutory

authorities on behalf of Tecil and got the attachment over the scrap belonging to Tecil lifted. Thereafter on payment of the consideration amount to Tecil, he purchased the scrap item from the said company. By that time, however, the petitioner had fallen out with the aforesaid Sri.Manikandan and the agreement between the petitioner and Sri.Manikandan was not carried further. The petitioner therefore sold the scrap purchased by him from Tecil to other persons after discharging the tax liability under the Kerala Value Added Tax Act in respect of those sales.

3. The Intelligence Officer attached to the Kerala Value Added Tax Department, relying solely on the agreement that was entered into between the petitioner and Sri.Manikandan, proceeded to impose a penalty on the petitioner by assuming that the sale transaction, as contemplated in the aforementioned agreement, had materialised and a penalty equal to twice the tax liability was imposed on the petitioner. The penalty was in an amount of Rs.4,80,00,000/-. The petitioner, aggrieved by the order of penalty filed a revision petition before the Deputy Commissioner. The Deputy Commissioner initially passed a conditional order of stay, in the revision that was filed before him, directing the petitioner to pay 50% of the amount of penalty confirmed against him by the Intelligence Officer. The said amount of 50% was

reduced to Rs.1 crore by a Division Bench of this Court in a writ appeal preferred by the petitioner consequent to the dismissal of a writ petition preferred by him against the interim order passed by the Deputy Commissioner. Although the petitioner preferred a Special Leave Petition before the Supreme Court, the same did not meet with any degree of success save for the petitioner being granted some more time to comply with the requirement of depositing Rs.1 crore. Accordingly, the petitioner paid the said amount of Rs.1 crore and the said fact is evidenced by Ext.P3 communication of the Assessing Officer. It would appear that, thereafter, the Deputy Commissioner allowed the revision petition by finding that the taxable event in relation to which the penalty was imposed on the petitioner itself had not materialised, and therefore the petitioner could not be held liable for any amount by way of penalty. Ext.P3 is the order of the Deputy Commissioner, Commercial Taxes in the revision preferred by the petitioner. Thus, on account of Ext.P3 order passed by the Deputy Commissioner, the petitioner became entitled to a refund of the amount of Rs.1 crore that he had paid during the pendency of the revision proceedings before the Deputy Commissioner. By Ext.P4 application, the petitioner therefore approached the 2nd and 3rd respondents seeking a refund of the said amount. The inaction on the part of the respondents in considering and passing orders on

Ext.P4 representation is what has driven the petitioner to this Court through the present writ petition.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader appearing on behalf of the respondents.

5. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, under normal circumstances, in the absence of any further proceedings pursuant to Ext.P3 order passed in relation to the petitioner, the petitioner would stand entitled to a refund of the amount of Rs.1 crore that was paid by him during the pendency of the revision proceedings before the Deputy Commissioner. In a statement filed on behalf of the respondents, however, it is now stated that the Commissioner of Commercial Taxes has initiated suo motu revision proceedings under Section 58 of the Kerala Value Added Tax Act on 18.11.2015. The said suo motu proceedings are seen numbered as R1 38778/2015. The respondent would rely on the fact of initiation of suo motu proceedings against Ext.P3 order to justify a rejection of the refund claim at this stage by relying on the provisions of Section 90 of the Kerala Value Added Tax Act, which enables the respondents to withhold refund amounts during the period when a

statutory revision is pending consideration before the Commissioner of commercial taxes. No doubt, by virtue of the said provision the respondents are entitled to withhold amounts by way of refund to an assessee, during the pendency of statutory appellate/revision proceedings before the higher authorities against an order consequent to which the assessee is claiming a refund. The said provision, however, has implicit in it a protection to the assessee also, in that, if the refund is withheld in the manner contemplated under section 90 and the matter is finally settled in favour of the assessee, the provision provides for the payment of interest on delayed refund at the rate of 6% per annum. In the instant case, counsel for the petitioner would submit that he is not seeking a refund simpliciter of Rs.1 crore that was paid by him during the pendency of the revisional proceedings, but is only seeking to substitute the said security that was offered by him, with security in the form of immovable property, if need be for twice that amount namely, Rs.2 crores. It is contended that, the petitioner is currently facing liquidity problems and the locking up of such funds of the petitioner would cause serious prejudice to the business interests of the petitioner. While I do find force in the said submission of counsel for the petitioner and would, in the absence of any statutory proceedings initiated by the respondents against Ext.P3 order, have allowed the said prayer of the petitioner for substituting the security, if not by ordering a complete refund of the amount deposited by him, I take note of the suo motu proceedings that have been initiated by the Commissioner of Commercial Taxes under section 58 of the Kerala Value Added Tax Act, and refrain from ordering a refund at this stage. Since this Court can ensure that the proceedings initiated by the Commissioner of Commercial Taxes are not unduly delayed, by prescribing a time limit within which the proceedings should be completed, I am of the view that, the prayer of the petitioner for a substitution of a security also need not be considered at this stage. I therefore dispose the writ petition with the following directions:

> (i) The Commissioner of Commercial Taxes shall complete the proceedings initiated by him under Section 58 of the Kerala Value Added Tax Act (No.R1 38778/2015) within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.
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> (ii) If the Commissioner of Commercial Taxes does not complete the proceedings initiated under Section 58 of the Kerala Value Added Tax Act against Ext.P3 order within the aforesaid period of two months or decides in favour of the petitioner in the said proceedings by an order passed within the said period, then

on the expiry of the said period, the 3rd respondent Assessing Officer shall consider and pass orders on Ext.P4 application preferred by the petitioner by treating it as one seeking a refund of the amount or substitution of security and for substitution of immovable property security in place of the cash security of Rs.1 crore that was paid by the petitioner during the pendency of the revision proceedings. The 3rd respondent shall do so within a period of two weeks after the expiry of the aforementioned period of two months.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/09.12.15