IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 31895 of 2015 (J)
---------------------------------------

PETITIONER(S) :
--------------------------

M/S.SEASON RUBBER PRIVATE LIMITED,
KOOVAPPALLY, KANJIRAPPALLY, REP. BY ITS JOINT
MANAGING DIRECTOR MR.GEORGE THOMAS.

BY ADVS.SRI.RAMESH CHERIAN JOHN
SRI.JOJO ISAAC NEYYARAPALLY

RESPONDENT(S) :
----------------------------

1. THE COMMERCIAL TAX OFFICER,
   SPECIAL CIRCLE, DEPARTMENT OF COMMERCIAL TAXES,
   KOTTAYAM- 686 001.

2. THE COMMERCIAL TAX OFFICER,
   DEPARTMENT OF COMMERCIAL TAXES, PONKUMMAM,
   KOTTAYAM DISTRICT.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 31895 of 2015 (J)
----------------------------------------

APPENDIX

PETITIONER(S)' EXHIBITS :
----------------------------------------

EXHIBIT P1: TRUE COPY OF THE TRIBUNAL ORDER DATED 21.06.2010 FOR THE ASSESSMENT YEAR 2001-02 ORDERING REFUND OF TAX PAID.

EXHIBIT P1A: TRUE COPY OF THE TRIBUNAL ORDER DATED 21.06.2010 FOR THE ASSESSMENT YEAR 2003-04 HOLDING REFUND OF TAX PAID.

EXHIBIT P2: TRUE COPY OF THE JUDGMENT DATED 09.04.2012 OF THIS HON'BLE COURT IN S.T.REV.NO.14/2011.

EXHIBIT P2A: TRUE COPY OF THE JUDGMENT DATED 09.04.2012 OF THIS HON'BLE COURT IN S.T.REV.NOS.138 TO 142 OF 2012.

EXHIBIT P3: TRUE COPY OF THE PETITIONER'S APPLICATION DATED 19.06.2012 FILED WITH THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2001-02.

EXHIBIT P4: TRUE COPY OF THE PETITIONER'S APPLICATION DATED 09.07.2012 FILED WITH THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2001-02.

EXHIBIT P5: TRUE COPY OF THE PETITIONER'S APPLICATION DATED 09.06.2012 FILED WITH THE 1ST RESPONDENT REQUESTING TO COMPLY WITH THE JUDGMENT FOR THE ASSESSMENT YEAR 2003-04.

EXHIBIT P6: TRUE COPY OF THE PETITIONERS REMINDER/LETTER DATED 30.06.2012 FILED WITH THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2003-04.

EXHIBIT P7: TRUE COPY OF THE REMINDER/LETTER DATED 09.07.2012 FILED WITH THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2003-04.

EXHIBIT P8: TRUE COPY OF THE REMINDER/LETTER DATED 26.07.2012 FILED WITH THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2003-04.

EXHIBIT P9: TRUE COPY OF THE JUDGMENT DATED 15.11.2012 OF THIS HON'BLE COURT DIRECTING THE RESPONDENTS TO PASS ORDERS ON EXT.P3 & P4 HEREIN.

EXHIBIT P10: TRUE COPY OF THE PETITIONER'S LETTER DATED 23.11.2012 FILED BEFORE THE 1ST RESPONDENT REQUESTING TO COMPLY WITH EXT.P9 BY POSTING THE CASE.

WP(C).No. 31895 of 2015 (J)
-----------------------------------------

EXHIBIT P11: TRUE COPY OF THE PETITIONER'S AFFIDAVIT DATED 09.07.2012 FILED BEFORE THE 1ST RESPONDENT REQUESTING TO COMPLY WITH EXT.P9 BY POSTING THE CASE.

EXHIBIT P12: TRUE COPY OF THE PETITIONER'S LETTER DATED 02.01.2013 FILED WITH THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2001-02.

EXHIBIT P13: TRUE COPY OF THE PETITIONER'S REMINDER LETTER DATED 15.01.2013 TO THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2001-02.

EXHIBIT P13A: TRUE COPY OF THE PETITIONER'S REMINDER LETTER DATED 15.01.2013 TO THE 1ST RESPONDENT FOR THE ASSESSMENT YEAR 2003-04.

EXHIBIT P14: TRUE COPY OF THE PETITIONER'S REPRESENTATION DATED 13.11.2013 TO THE 1ST RESPONDENT REQUESTING FOR THE REFUND FOR THE ASSESSMENT YEAR 2001-02.

EXHIBIT P14A: TRUE COPY OF THE PETITIONER'S REPRESENTATION DATED 13.11.2013 TO THE 1ST RESPONDENT REQUESTING FOR THE REFUND FOR THE ASSESSMENT YEAR 2003-04.

RESPONDENT(S)' EXHIBITS :
-------------------------------------------

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

**A.K.JAYASANKARAN NAMBIAR, J.**

\- - - - - - - - - - - - - - - - - - - - - - - - - -

**W.P.(C) No.31895 of 2015**

\- - - - - - - - - - - - - - - - - - - - - - - - - -

Dated this the 19th day of November 2015

**JUDGMENT**

The petitioner, who is engaged in the business of manufacture and sale of centrifuged Latex, is aggrieved by the inaction on the part of the respondents in granting refund to the petitioner, of purchase tax paid on the turnover of rubber used in the manufacture of centrifugal latex and crumb rubber. It is stated in the writ petition that, by Exts. P2 and P2 A judgments of this Court, the revisions filed by the petitioner against orders of the appellate tribunal holding them dis-entitled to the refund of tax, were allowed, and the matter was remitted to the 1st respondent for reconsidering the claim for refund after giving an opportunity to the petitioner to furnish accounts and other evidence, to establish that there was no unjust enrichment in the claim for refund of tax. The said judgment also held that it would be open to the petitioner to apply for CST exemption based on the judgment, and if the petitioner came with a claim for CST exemption, the 1st respondent would consider the said claim based on the tax paid under the KGST Act. It is submitted that the respondents failed to comply with the directions in the said judgment and therefore, the petitioner approached this Court yet again, and by Ext.P9 judgment, the 1st respondent was directed to comply with Ext.P2 judgment within four weeks of production of a copy of that judgment. In the present writ petition, the petitioner submits that the respondents have not complied even with the directions in Ext.P9 judgment and therefore, the entitlement of the petitioner, to the refund originally claimed in respect of the purchase tax paid on the turnover of rubber used for manufacture of centrifuged Latex and crumb rubber, now stands crystallized in favour of the petitioner. It is pointed out that, through a series of representations, culminating in Exts. P14 and P14A representations, dated 13.11.2013, the petitioner has approached the 1st respondent for refund of the tax, but the 1st respondent has refused to act upon the same. It is under these circumstances, the petitioner prays for a direction to the 1st respondent to consider and pass orders on Exts. P14 and P14A representations, expeditiously after hearing the petitioner.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader 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 on account of the inaction on the part of the respondents in complying with the

directions in Ext.P2 and P2A judgments, as also the specific direction in Ext.P9 judgment of this Court, the respondents cannot now deny the petitioner the benefit of the refund claimed by him. I find however that the entitlement of the petitioner to refund is always subject to the petitioner establishing that, consequent to the grant of refund of tax, he would not be unjustly enriched. I, therefore, dispose this writ petition with a direction to the 1st respondent to consider and pass orders on Exts. P14 and P14A representations preferred by the petitioner by determining only the issue of whether the petitioner would be unjustly enriched through the grant of refund claimed by him. It is made clear that the entitlement of the petitioner otherwise, to the refund claimed, is not to be the subject matter of determination by the 1st respondent in the representations filed by the petitioner. The 1st respondent shall consider and pass orders as directed, and after hearing the petitioner, within a period of three months from the date of receipt of a copy of this judgment. It will be open to the petitioner to produce all documents necessary to establish the absence of unjust enrichment, before the 1st respondent at the time of the personal hearing .

Sd/-
**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

sm/