IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WP(C).No. 33968 of 2014 (U)

PETITIONER :

ANNAKUTTY A.J.,
M/S ANJALI BROILERS, KADALIKKADU,
MUVTTUPUZHA, ERNAKULAM.

BY ADVS.DR.K.P.PRADEEP
SRI.MATHEW GEORGE VADAKKEL

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

2. ASSISTANT COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES, SPECIAL CIRCLE,
   MATTANCHERY AT ALUVA, ERNAKULAM.

3. ASSISTANT COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES, SPECIAL CIRCLE,
   PERUMBAVOOR, ERNAKULAM.

4. DEPUTY TAHSILDAR (RR),
   TALUK OFFICE, MUVATTUPUZHA, ERNAKULAM.

BY SR GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 33968 of 2014 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE ORDER NO 24010855/03-04 DATED 24-03-2010 ISSUED BY THE 2ND REPSONDENT TO THE PETITIONER**
EXHIBIT P2	**TRUE COPY OF THE REFUND ADJUSTMENT ORDER NO.33103 DATED 25-03-2010 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER**
EXHIBIT P3	**TRUE COPY OF THE ORDER IN APPEAL NO KVAT 1/2008 DATED 05-10-2009 PASSED BY THE DEPUTY COMMISSIONER (APPEALS), ERNAKULAM AND ISSUED TO THE PETITIONER**
EXHIBIT P4	**TRUE COPY OF THE NOTICE OF SALE NO B4-7349/11,B4-7350/11, B4-7351/11, B4 -8414/11,B4 -8448/11 DATED 31-10-2014 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER**
EXHIBIT P5	**TRUE COPY OF THE COMMUNICATION NO.32150202164/2006-07 DATED 29-03-2014 ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT**
EXHIBIT P6	**TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONER ON 03-12-2014 TO THE 3RD RESPONDENT**
EXHIBIT P7	**TRUE COPY OF THE REQUEST DATED 12-12-2014 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 33968 of 2014

Dated this the 31st day of July, 2015

JUDGMENT

The petitioner is a trader in Broiler Chicken. As per Ext.P1 Order dated 24.03.2010, it was ordered that the petitioner has paid Rs. 9,39,258/- in excess sales tax for the year 2003-04 and this was ordered to be adjusted towards the assessment year 2005-06. Thereafter, it appears that as per Ext.P3 order, the assessment order was modified for the year 2005-06.

2. The petitioner has approached this Court when recovery proceedings were initiated for the years 2005-06 to 2010-11. As the matter stands now, the total tax dues from the petitioner is only Rs. 61,937/- as per the order of the Assistant Commissioner-II dated 25.02.2015. The petitioner has also placed before me for perusal, the above order No. 32150202164/05-06 to 07-08, dated 25.02.2015.

3. The learned counsel for the petitioner submits that the calculation of Rs. 61,937/- as liability is without split-up details of the interest due to the petitioner. The petitioner also submits that he is entitled for statutory interest after 90 days, till the amount is adjusted for the demand arising for the subsequent assessment years.

4. I am not expressing anything on the merits of this case, especially when the matter requires a reconsideration that the adjustment of the amount is the only issue based on the subsequent order and all other orders are now merged with the subsequent decision. The revenue recovery demand was, in fact, issued for claiming Rs. 12,57,151/- and that amount is admittedly not payable by the petitioner.

5. This Court is of the view that the revenue recovery proceedings are liable to be set aside as the petitioner had no such liability even according to the statement of the respondents. Therefore, the only question is whether the petitioner is liable to pay Rs. 61,937/-. There cannot be any doubt that the petitioner would be entitled for the interest, that details are not reflected in the order. Therefore, it is incumbent on the Authority to show the exact liability after giving adjustment to the refund order with interest and the details must be reflected by a reasoned order. Therefore, this Court is of the view that the 3rd respondent shall take a decision in this matter after showing the split-up details of the amount adjusted along with the interest and convey it to the petitioner. However, it is made clear that the petitioner shall also be given an opportunity to raise any objection in this matter. Any further proceedings for revenue recovery can be proceeded only after issuing a fresh demand after

reckoning the liability as a whole.

6. Apart from the above issues, the petitioner has also raised an issue based on Ext.P5 regarding reckoning the payment made by the petitioner during 2006-07. The proceedings based on the above shall be completed by the 3rd respondent after notice to the petitioner within a period of three months.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE

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