IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WP(C).No. 35084 of 2014 (I)

PETITIONER :

M/S.CANAN TECHNOLOGIES (P) LTD.,
HB 68, PANAMPILLY NAGAR, KOCHI
REPRESENTED BY ITS MANAGING DIRECTOR SRI.V.D.SEBASTIAN

BY ADVS.SMT.INDU SUSAN JACOB
SRI.V.K.SHAMUSUDHEEN

RESPONDENT(S) :

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1. STATE OF KERALA
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE DEPUTY COMMISSIONER (APPEALS)
   COMMERCIAL TAXES, ERNAKULAM - 682 015

3. ASSISTANT COMMISSIONER
   SPECIAL CIRCLE-II, ERNAKULAM 682 015

4. THE DEPUTY TAHSILDAR(RR)
   KANAYANNUR TALUK, ERNAKULAM - 682 011

R1 TO R4 BY SR. GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

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APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1 COPY OF THE ASSESSMENT ORDER PASSED BY IST RESPONDENT FOR THE YEAR 2006-07 DATED 31/7/2012.

EXHIBIT P2 COPY OF THE ASSESSMENT ORDER PASSED BY IST RESPONDENT FOR THE YEAR 2008-09 (KVAT) DATED 30/6/2012.

EXHIBIT P3 COPY OF THE ASSESSMENT ORDER PASSED BY IST RESPONDENT FOR THE YEAR 2008-09 (CST) DATED 30/6/2012.

EXHIBIT P4 COPY OF THE NOTIFICATION NO. 116/2002 DATED 5/4/2002.

EXHIBIT P5 COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2006-07 DATED 17/9/2012.

EXHIBIT P6 COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2008-09 (KVAT) DATED 17/9/2012.

EXHIBIT P7 COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2008-09 (CST) DATED 17/9/2012.

EXHIBIT P8 COPY OF THE DELAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ALONG WITH EXT. P5 APPEAL.

EXHIBIT P9 COPY OF THE DELAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ALONG WITH EXT. P6 APPEAL.

EXHIBIT P10 COPY OF THE DELAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ALONG WITH EXT. P7 APPEAL.

EXHIBIT P11 COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ALONG WITH EXT. P5 APPEAL.

EXHIBIT P12 COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ALONG WITH EXT. P6 APPEAL.

EXHIBIT P13 COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ALONG WITH EXT. P7 APPEAL.

EXHIBIT P14 COPY OF THE APPELLATE ORDER PASSED BY THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM FOR THE YEAR 2006-07 DATED 17.11.2014.

EXHIBIT P15 COPY OF THE APPELLATE ORDER PASSED BY THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM FOR THE YEAR 2008-09 (KVAT) DATED 17.11.2014.

(Contd...)

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EXHIBIT P16	COPY OF THE APPELLATE ORDER PASSED BY THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM FOR THE YEAR 2008-09 (CST) DATED 17.11.2014.
EXHIBIT P17	COPY OF THE ORDER IN S.L.P. NO. 14014/2007 DATED 20.8.2007.
EXHIBIT P18	COPY OF THE JUDGMENT IN W.A NO.1458/2009 DATED 14.7.2009.
EXHIBIT P19	COPY OF THE JUDGMENT IN WP(C) NO. 11562 OF 2012 DATED 22.5.2012.
EXHIBIT P20	COPY OF THE JUDGMENT IN WP(C) NO. 11737 OF 2012 DATED 23.5.2012.
EXHIBIT P21	COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED FOR THE YEAR 2008-09 (KVAT).
EXHIBIT P22	COPY OF THE DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT ISSUED FOR THE YEAR 2008-09 (CST).
EXHIBIT P23	COPY OF THE DEMAND NOTICE IN FORM NO. 12 ISSUED FOR THE YEAR 2006-07.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.35084 OF 2014

Dated this the 9th day of January, 2015

<u>J U D G M E N T</u>

Aggrieved by Exts.P1 to P3 assessment orders under the Kerala Value Added Tax Act and Central Sales Tax Act for the assessment years 2006-2007 and 2008-2009, the petitioner had preferred Exts.P5, P6 and P7 appeals before the 2nd respondent appellate authority. The said appeals, however, were not entertained in view of the fact that the petitioner had not remitted the Kerala Legal Benefit Fund (KLBF) amount as a pre condition for maintaining the appeals. Accordingly, the appeals came to be dismissed by Exts.P14 to P16 orders. In the writ petition, the petitioner impugns Exts.P14 to P16 orders, inter alia, on the ground that the the levy of additional court fee by way of KLBF itself is unconstitutional.

2. I have heard Smt.Indu Susan Jacob, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned counsel appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the

case as also the submissions made across the bar, I note that the challenge against the validity of the levy of additional court fee has already been repelled by a Division Bench of this Court in **Chackolas Spinning and Weaving Mills Ltd. v. State of Kerala (2006 (1) KLT 989)**. It is clear, therefore, that the petitioner cannot escape the obligation to pay the additional court fee as a pre condition for maintaining the appeals before the 2nd respondent appellate authority. To that extent, therefore, Exts.P14 to P16 orders cannot be said to be illegal. I take note, however, of the fact that the petitioner was disputing the validity of the levy of additional court fee and it was, therefore, that he did not remit the KLBF amounts. I feel that an opportunity can be given to the petitioner to pursue his appellate remedy against Exts.P1 to P3 assessment orders before the 2nd respondent. Accordingly, I dispose the writ petition with the following directions:

i. If the petitioner remits the additional court fee applicable, in respect of Exts.P5, P6 and P7 appeals before the 2nd respondent, together with an amount of Rs.15 lakhs, towards the tax amount confirmed against him by Exts.P1 to P3 assessment orders, by 31.03.2015, then the 2nd respondent shall consider and pass orders on Exts.P5, P6 and P7 appeals, after hearing the petitioner, within a period of three months thereafter. To enable the 2nd respondent to do this I quash Ext.P14 to P16 orders.

ii. The recovery steps, if any, initiated against the petitioner for realisation of the amounts due under Exts.P1 to P3 assessment orders shall be kept in abeyance till such time as the 2nd respondent passes orders, as directed above, in the appeal and communicates the same to the petitioner.

iii. It is made clear that if the petitioner defaults in complying with any of the conditions aforementioned, he will lose the benefit of this judgment and the respondents will be free to proceed against the petitioner for realisation of the amounts confirmed against him by Exts.P1 to P3 assessment orders.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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