IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 35373 of 2015 (V)

PETITIONER(S):

M/S. RED BULL INDIA (P) LTD
NO.25, 1ST FLOOR, ANAND TOWER,
RAJARAM MOHAN ROY ROAD
RICHMOND CIRCLE, BANGALORE - 560 025
REPRESENTED BY ITS AUTHORISED SIGNATORY

BY ADV. SRI.G.KRISHNAKUMAR

RESPONDENT(S):
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1. COMMERCIAL TAX OFFICER - 1
COMMERCIAL TAX OFFICE, KAP COMPLEX
ALUVA - 683 101

2. COMMISSIONER OF COMMERCIAL TAX
TAXES TOWER, KARAMANA
THIRUVANANTHAPURAM - 695 002

BY SRI R.RANJITH, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.35373/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1	**:**	**COPY OF THE NOTICE DATED 14.09.2015 ISSUED BY THE 1ST RESPONDENT**
P2	**:**	**COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT UNDER SECTION 25(1) OF THE ACT**
P3	**:**	**COPY OF THE REPLY DATED 16.10.2015 PREFERRED BY THE PETITIONER IN RESPONSE TO EXHIBITS P1 AND P2 BEFORE THE 1ST RESPONDENT**
P4	**:**	**COPY OF HTE NOC DATED 01.06.2012 ISSUED BY THE FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA**
P5	**:**	**COPY OF THE CERTIFICATE DATED 08.04.2013 ISSUED FROM THE DIRECTORATE GENERAL OF FOREIGN TRADE**
P6	**:**	**COPY OF HTE ORDER DATED 09.07.2012 OF THE COMMISSION OF TRADE AND TAXES, GOVERNMENT OF NCI, DELHI**
P7	**:**	**COPY OF THE CLARIFICATION APPLICATION PREFERRED BY THE PETITIONER TO THE 2ND RESPONDENT**
P8	**:**	**COPY OF HTE REQUEST DATED 20.11.2015 PREFERRED TO THE 1ST RESPONDENT**

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

PA TO JUDGE

JV

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).No.35373 of 2015

Dated this the 23rd day of November, 2015

JUDGMENT

The petitioner, who is a dealer in energy drinks under the brand name of "Red Bull", is aggrieved by Exts.P1 and P2 notices that have been issued to him proposing the completion of an assessment, and imposition of a penalty, under the Kerala Value Added Tax Act for the assessment year 2014-2015.

2. The grievance of the petitioner in the writ petition is essentially that in connection with the classification of the items for the purposes of taxation, he has preferred Ext.P7 clarification application before the 2nd respondent, and it is even before the 2nd respondent has had occasion to clarify the issue that is raised in the application that Exts.P1 and P2 notices have been issued to the petitioner. The petitioner would submit that if a clarification on the lines suggested by the petitioner is given by the 2nd respondent, then Exts.P1 and P2 notices would not need

to be proceeded with.

3. I have heard the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that insofar as the proposed assessment and imposition of penalty through Exts.P1 and P2 notices are based on a classification dispute, in respect of which, the petitioner has sought for a clarification from the 2^{nd} respondent, the interests of justice would require me to dispose this writ petition by directing the 2^{nd} respondent to consider and pass orders on Ext.P7 application preferred by the petitioner within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. It will be open to the petitioner to produce materials before the 2^{nd} respondent to substantiate his contentions regarding the correct classification of the product in question at the time of hearing. I make it clear that further proceedings pursuant to Exts.P1 and P2 notices shall be kept in abeyance till such time as orders are passed by the 2nd respondent, as directed in the clarification application, and communicated to the petitioner.

SD/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

JV