IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 37593 of 2015 (Y)

PETITIONER(S) :

INDUS SPECIALITY OILS,
12/813, NIDA, KANJIKODE, PALAKKAD DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER
MADHUKUMAR R.MENON.

BY ADVS.SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.K.S.HARIHARAN NAIR

RESPONDENT(S) :

COMMERCIAL TAX OFFICER,
2ND CIRCLE, COMMERCIAL TAX OFFICE COMPLEX,
NEAR CIVIL STATION, PALAKKAD- 678 001.

BY GOVERNMENT PLEADER SRI.R.RENJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 37593 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: COPY OF THE ASSESSMENT ORDER DATED 05.04.2011 ISSUED BY RESPONDENT FOR THE YEAR 2008-09.

EXHIBIT P2: COPY OF THE APPELLATE ORDER DATED 12.11.2011 FOR THE YEAR 2008-2009.

EXHIBIT P3: COPY OF THE ORDER DATED 31.03.2015 ISSUED BY THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL.

EXHIBIT P4: COPY OF THE PETITION DATED 13.11.2015 FILED BEFORE THE APPELLATE TRIBUNAL UNDER SECTION 66 OF THE ACT AND THE AFFIDAVIT IN SUPPORT.

EXHIBIT P5: COPY OF THE NOTICE DATED 06.10.2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2009-10.

EXHIBIT P5(A): COPY OF THE NOTICE DATED 26.10.2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2010-11.

EXHIBIT P6: COPY OF THE REPLY DATED 20.10.2015 FILED BY PETITIONER FOR THE YEAR 2009-10.

EXHIBIT P6(A): COPY OF THE REPLY DATED 06.11.2015 FILED BY THE PETITIONER FOR THE YEAR 2010-11.

EXHIBIT P7: COPY OF THE ASSESSMENT ORDER DATED 27.11.2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2009-10.

EXHIBIT P7(A): COPY OF THE ASSESSMENT ORDER DATED 27.11.2015 ISSUED BY THE RESPONDENT FOR THE YEAR 2010-11.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.37593 of 2015

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Dated this the 17th day of December 2015

JUDGMENT

The challenge in the writ petition is against Exts.P7 and P7(a) orders of assessment passed in relation to the petitioner for the assessment years 2009-10 and 2010-11, under the KVAT Act. The grievance of the petitioner in the writ petition against the said orders is essentially that, an issue of classification of the product dealt with by the petitioner under entry 135 at List A of 3rd schedule to the KVAT Act, was not considered by the respondent assessing authority, while passing Exts.P7 and P7(a) orders. The learned counsel for the petitioner would submit that, the issue of classification of the product was one that was taken up to the stage of the appellate tribunal in the previous assessment year, and the appellate tribunal had not considered the alternate classification proposed by the petitioner in respect of the product in question. Against the final order passed by the appellate tribunal in the appeal, the petitioner has preferred a rectification application for correcting the mistakes that occurred in the orders passed by the appellate tribunal. In the impugned orders, it is submitted, the respondent assessing authority merely went by the fact of dismissal of the appeal by the appellate tribunal for the earlier assessment year, and did not independently consider the plea of alternate classification, put forth by the petitioner. It is therefore submitted that Exts.P7 and P7(a) orders are vitiated by a patent non-application of mind, by the respondent assessing authority.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondent.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find on a perusal of Exts.P7 and P7(a) orders that the respondent assessing authority has not specifically dealt with the contention of the petitioner with regard to the alternate classification, under entry 135 of list A of the 3rd schedule to the KVAT Act, although this was specifically raised as an objection in the reply to the pre-assessment notice for the said years, In Exts.P7 and P7(a) orders, the respondent assessing authority has merely noted the dismissal of the appeal, preferred by the petitioner for the earlier assessment year, and decided the classification issue, against the petitioner. The non-consideration of the alternate plea of the petitioner tantamounts to a patent non-application of mind by the respondent assessing authority. I therefore quash Ext.P7 and P7(a)

orders and direct the assessing authority to pass fresh orders of assessment in relation to the petitioner for the assessment years 2009-10 and 2010-11, after hearing the petitioner. To enable the respondent to do so, I direct the petitioner to appear before the respondent at his office at 11 a.m. on 30.12.2015. The respondent shall pass orders as directed, within a period of one month, thereafter.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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