IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 25TH DAY OF NOVEMBER 2016/4TH AGRAHAYANA, 1938

WP(C).No. 28594 of 2016 (Y)

PETITIONER :

M/S GULF OIL LUBRICANTS INDIA LIMITED.,
PAKKARI PROPERTIES, TEMPLE ROAD,
KOONAMTHAI, EDAPPALLY, COCHIN- 682 024
REPRESENTED BY ITS AUTHORIZED SIGNATORY
SHRI.MANJUNATH K.

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMT. G.MINI
SRI.P.S.SREE PRASAD
SRI.JACOB JOHN (TRIVANDRUM)

RESPONDENT(S):
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1. COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM-695 001

2. ASSISTANT COMMISSIONER,
SPECIAL CIRCLE-III,
ERNAKULAM- 682 016

BY GOVERNMENT PLEADER SMT. M.M.JASMIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-11-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 28594 of 2016 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 A TRUE COPY OF THE SAID ANNUAL RETURN FOR THE PERIOD 2011-12

EXHIBIT P1(A) A TRUE COPY OF THE SAID ANNUAL RETURN FOR THE PERIOD 2012-13

EXHIBIT P1(B) A TRUE COPY OF THE SAID ANNUAL RETURN FOR THE PERIOD 2013-14

EXHIBIT P2 A TRUE COPY OF THE AUDIT STATEMENT FOR THE PERIOD 2011-12

EXHIBIT P2(A) A TRUE COPY OF THE AUDIT STATEMENT FOR THE PERIOD 2012-13

EXHIBIT P2(B) A TRUE COPY OF THE AUDIT STATEMENT FOR THE PERIOD 2013-14

EXHIBIT P3 TRUE COPY OF THE NOTICE FOR THE ASSESSMENT YEAR 2011-12 DATED 10-12-2015

EXHIBIT P4 TRUE COPY OF THE NOTICE FO THE ASSESSMENT YEAR 2012-13 DATED 10-12-2015

EXHIBIT P5 TRUE COPY OF THE NOTICE FOR THE ASSESSMENT YEAR 2013-14 DATED 10-12-2015

EXHIBIT P6 TRUE COPY OF THE CIRCULAR ISSUE BY THE COMMERCIAL TAXES NAMELY 5/2005

EXHIBIT P7 TRUE COPY OF THE REPLY FOR THE ASSESSMENT YEAR 2011-2012

EXHIBIT P8 A TRUE COPY OF THE ORDER PASSED BY THE DEPUTY COMMISSIONER(APPEALS) FOR THE ASSESSMENT YEAR 2009-10 DATED 7-8-2013

EXHIBIT P9 A TRUE COPY OF THE ORDER PASSED BY THE DEPUTY COMMISSIONER(APPEALS) FOR THE ASSESSMENT YEAR 2010-11 DATED 7-8-2013

EXHIBIT P10 A TRUE COPY OF THE ORDER PASSED BY THE DEPUTY COMMISSIONER(APPEALS) FOR THE ASSESSMENT YEAR 2012-13 DATED 4-9-2013

EXHIBIT P11 A COPY OF THE SCHEME CIRCULAR, INVOICES,& CUSTOMER LEDGER FOR THE PERIOD 2011-12

EXHIBIT P12 A COPY OF THE SCHEME CIRCULAR, INVOICES & CUSTOMER LEDGER FOR THE PERIOD 2013-14

2/-

WP(C).NO.28594/2016

EXHIBIT P13 TRUE COPY OF THE ASSESSMENT ORDER DATED 01-06-2016 FOR THE ASSESSMENT YEAR 2011-12

EXHIBIT P14 TRUE COPY OF THE ASSESSMENT ORDER DATED 01-06-2016 FOR THE ASSESSMENT YEAR 2012-13

EXHIBIT P15 TRUE COPY OF THE ASSESSMENT ORDER DATED 01-06-2016 FOR THE ASSESSMENT YEAR 2013-14

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.M.SHAFFIQUE, J

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W.P.C.No.28594 of 2016

Dated this the 25th day of November 2016

J U D G M E N T

Petitioner challenges Exts.P13, P14 and P15 assessment orders with reference to the assessment years 2011-2012, 2012-13 and 2013-14. By the impugned assessment orders, the Assessing Officer had rejected the objection of the petitioner and included the quantity discount given to the dealers as part of the turn over.

2. The main contention urged by the petitioner is that in respect of the previous years, similar assessments were made which were taken in appeal before the Deputy Commissioner (Appeals) who remitted the matter back to the assessing officer as per orders Exts.P8, P9 and P10, by which direction was issued to the assessing officer to reconsider the same in the light of Ext.P6 circular and to delete the additions made based on the quantity discount granted to the petitioners. It is submitted that since the assessing officer had allowed the same and assessment orders were passed giving effect to the remand order and deleting the quantity discount given by the petitioner from the

turn over.

3. Learned counsel for the petitioner submits that the assessing officer had failed to rely upon Ext.P6 circular on the basis that it is contrary to the statute. In Ext.P6 circular, The Commissioner, Commercial Tax had indicated at paragraph 5 as under:

> *"5. Section 7 provides that if a dealer allows any trade discount in terms of quantity in goods in relation to any sale effected by him, the quantity so allowed as trade discount shall be deemed to be a sale by the dealer who allow such discount or incentive and a purchase by the dealer who receives such trade discount or incentive and that such sale shall form part of the sale in relation to which such trade discount or incentive is allowed.*
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> *Illustration: Dealer A sells 100 television sets to another dealer B for Rs.15 lakhs and allows a trade discount of five television sets without charging any amount additionally. The five television sets given as trade discount will also be deemed to be a sale by A to B. But since A has not charged any amount additionally for these 5 television sets, the turnover of A in respect of this transaction will*

> *be only Rs.15 lakhs. But if it is proved subsequently that the dealer had realized any amount from B towards the price of these five television sets either through debit notes or in any other form, that amount will be added to the turnover in respect of the above sale by A. But as far as B is concerned, the quantity purchased will be 105 units and not 100 units. When B effects sales he will have to account for the sales of all these 105 units, unless he allow quantity discount in the above manner."*

4. It is submitted that, a bare reading of the illustration given by the Commissioner by itself would indicate the true and correct meaning of Section 7 of the Act. It is further submitted that since the very same assessing officer had accepted the aforesaid contention on the basis of the circular, there is no reason why such an order had been passed by the very same assessing officer.

5. On the other hand, placing reliance upon the counter affidavit filed, the learned Government Pleader supports the stand taken in the impugned assessment orders. It is submitted that there is no evidence to show that the quantity discount given by the dealer has reached the hands of the end customers, free of

cost.

6. Having regard to the respective contentions of the parties, the short question to be considered is whether this Court should interfere with the impugned orders especially in the light of Ext.P6 appeal. Section 7 of the KVAT Act is relevant which reads as under:

> *"**7. Trade discount etc. deemed to be sale in certain cases**.- Notwithstanding anything contained in any other provisions of this Act, where a dealer allows any trade discount or incentive in terms of quantity in goods in relation to any sale effected by him, the quantity so allowed as trade discount or incentive, shall be deemed to be a sale by the dealer, who allows such trade discount or incentive and a purchase by the dealer who receives such trade discount or incentive and such sale shall form part of the sale in relation to which such trade discount or incentive is allowed."*

7. Section 7 only indicates that the dealer who allows trade discount or incentive in terms of quantity in goods in relation to any sale effected by him. The quantity so allowed as trade discount or incentive shall be deemed to be a sale by the

dealer. Statute does not say that the said trade discount shall form part of the turnover of the dealer. This aspect has been clarified by the Commissioner in the circular along with the illustration. The illustration substantially clarifies the issue and as pointed out by the learned counsel for the petitioner, when the assessing officer himself has subsequently accepted the illustration in the circular and in the case of the petitioner, orders were passed on 01/10/2016 in respect of the previous years, I do not think that any further consideration of the matter is required. I am therefore of the view that the circular Ext.P6 clarifies the statutory provision in terms of Section 7 which the assessing officer is bound to endorse. That there is no evidence to show that the end customer was given the benefit of trade discount, is not at all a matter, which the petitioner is concerned. As far as the petitioner is concerned, he had effected sale of goods by providing the quantity discount and the turnover is only with respect to the consideration received by the petitioner for the quantity which is actually sold and the discount given to the dealer in question. Under such circumstances, I am of the view that this writ petition is to be allowed.

Accordingly, this writ petition is allowed as under:

i) Exts.P13, P14 and P15 are set aside.

ii) The assessing authority is directed to reconsider the matter afresh in accordance with the observations made above and the Circular No.5/05 of the Commissioner of Commercial Taxes.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

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