**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**WEDNESDAY, THE 14TH DAY OF DECEMBER 2016/23RD AGRAHAYANA, 1938**

**WP(C).No. 9123 of 2014 (M)**

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**PETITIONER(S):**

A.V.SHINE,
ARAKKATHARA HOUSE, PALLURUTHY, KOCHI 682 002.

BY ADVS.SMT.S.K.DEVI
SRI.SHANMUGHAM D. JAYAN

**RESPONDENT(S):**

1. THE COMMERCIAL TAX OFFICER,
   DEPT. OF COMMERCIAL TAXES,
   II CIRCLE, MATTANCHERY, PIN: 682 002.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
   VIKHAS BHAVAN, THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SMT.M.M.JASMINE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-12-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 9123 of 2014 (M)

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APPENDIX

PETITIONER(S)' EXHIBITS

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EXT.P1: TRUE COPY OF THE ORDER NO.24121649/2000-01 DATED 23/12/2013.

EXT.P2: TRUE COPY OF THE REQUEST DATED 12/3/2014.

EXT.P2A: TRUE COPY OF THE REMINDER DATED 24/3/2014.

EXT.P3: TRUE COPY OF THE JUDGMENT IN WPC NO.5447/2014 DATED 11/3/2014.

EXT.P4: TRUE COPY OF THE COMMUNICATION DTD.27.3.2014.

EXT.P5: TRUE COPY OF THE RELEVANT PAGES OF THE ASSESSMENT ORDER HAVING THE WORKING.

EXT.P6: TRUE COPY OF THE APPELLATE ORDER NO.STA 184/2013.

EXT.P7: TRUE COPY OF THE LETTER DTD.25.6.2014.

EXT.P8: TRUE COPY OF THE REVISED ORDER NO.24121649/2000-01 (MODIFIED) DTD.17.8.2016.

EXT.P9: TRUE COPY OF THE APPLICATION DTD.30.9.2016.

RESPONDENT(S)' EXHIBITS

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NIL

//TRUE COPY//

P.S.TO JUDGE

msv/

**A.M. SHAFFIQUE, J.**

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W.P. (C) No. 9123 of 2014

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Dated this, the 14th day of December, 2016

**J U D G M E N T**

Petitioner has sought for a direction to the 1st respondent to receive ₹21,10,000/- on or before 31st March 2014 under Section 23B of the Kerala General Sales Tax Act (hereinafter referred to as the Act). During the pendency of the writ petition, by virtue of an interim order dated 31/3/2014, the petitioner had remitted ₹24,54,503/- as submitted by the learned Government Pleader.

2. The short facts involved in the writ petition is that petitioner claimed the benefit of amnesty in terms of Section 23B(d) of the Act. According to the petitioner, as per the above provision, petitioner is entitled for waiver of 90% of the interest and the entire amount due as penalty and interest thereof. Petitioner submits that while submitting application for amnesty, petitioner was informed that the petitioner will have to pay 10% of the penalty amount as well as interest thereon in addition to 10% interest along with tax dues. According to the petitioner, the manner of computation is totally illegal and not in accordance with the statutory provision and

if the reduction is given in accordance with the manner in which the petitioner has worked, the total liability will come to ₹21,09,811/- and hence this writ petition is filed.

3. Counter affidavit has been filed by the respondent *inter alia* stating that as against an order of assessment, petitioner had challenged the matter before the appellate authority who modified the order of assessment. Consequently appeal was filed which is pending before the Tribunal as TA No.6/2014. The petitioner gave intimation dated 23/12/2013 seeking the benefit under an amnesty scheme. When an intimation was given to the petitioner to remit certain amounts, the same was challenged by filing WP(C) No.5447/2014. This Court by judgment dated 11/3/2014 directed the 1st respondent to reconsider the application and inform the petitioner about the amount to be satisfied under the Scheme, pursuant to which the petitioner was intimated as per letter dated 27/3/2014 that the amount payable would come to ₹53,88,674/-. According to the State, the petitioner is liable to pay the principal amount as on 31/7/2013, 10% of the penalty due and 10% of the interest on

penalty. Therefore, it is submitted that the amount remitted by the petitioner does not satisfy the amnesty scheme. It is also submitted that during the pendency of the writ petition, the Tribunal had interfered with the assessment order and Ext.P8 dated 17/8/2016 is the order passed by the Commercial Tax Officer. I do not think that I should go into the details of the adjustments made in the matter after the Tribunal's order.

4. The short question to be considered in the writ petition is whether the amnesty scheme involves payment of 10% of the penalty amount and 10% of the interest on penalty. Relevant provision under Section 23B(d) reads as under:-

> ***"23B. Reduction of arrears in certain cases:-***
> *(1) Notwithstanding anything contained in this Act, or in any Judgment, decree or order of any court, tribunal or appellate authority, an assessee who is in arrears of tax or any other amount due under the Act relating to the period ending on 31st March, 2005, may opt for settling the arrears by availing reduction at the following rates:*
> *(a) xxxx*
> *(b) xxxx*
> *(c) xxxxx*
> *(d) In the case of demands relating to the period*

> *from 1st April, 2000 to 31st March, 2005, a reduction of ninety per cent of the interest on the tax amount, and for the amount of penalty and interest thereon.”*

5. In respect of amnesty scheme available in respect of demands relating to the period 1st April, 2000 to 31st March, 2005, the reduction granted is 90% of the interest on the tax amount and for the amount of penalty and interest thereon. The contention is that the reduction is for 90% of the interest on tax amount and also the entire amount of penalty and interest thereon. If such was the intention of the Legislature, definitely there was no reason to have specifically mentioned it, whereas what the Legislature has done was that after the word tax amount, a comma is inserted and thereafter the words '*and for the amount of penalty and interest thereon*' is incorporated, which apparently indicates that the words “reduction of 90%” is on the interest on the tax amount as well as on the amount of penalty and interest thereon. A different view is not possible and therefore I do not think that the petitioner was justified in making such a demand.

6. In so far as during the pendency of the writ petition, petitioner had paid certain amounts and a revised assessment order had already been passed, it shall be open for the Commercial Tax Officer to take a fresh decision in the matter after taking note of the judgment aforesaid.

Writ petition is disposed of accordingly.

Sd/-
**A.M. SHAFFIQUE, JUDGE**

Rp15/12/2016

//True Copy//

P.S to Judge