2024:KER:81116

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 1ST DAY OF NOVEMBER 2024 / 10TH KARTHIKA, 1946

WP(C) NO. 14951 OF 2024

PETITIONER:

M/S. NIVZ IMPORTS & EXPORTS A) LTD.,
[NOW CHAITHANYAM BUILDERS (P) LTD.] KOTTUNGAL SHOPPING COMPLEX, KODANUR, THRISSUR, REPRESENTED BY ITS MANAGING DIRECTOR ALEESH K. S., AGED 58, S/O. SREEDHARAN,
PIN – 680563.

BY ADV SANTHOSH P.ABRAHAM

RESPONDENTS:

1 THE DEPUTY COMMISSIONER OF STATE TAX,
KERALA STATE GOODS & SERVICE TAX DEPARTMENT,
STATE TAX COMPLEX POOTHOLE P.O., THRISSUR,
PIN – 680 004.

2 THE STATE TAX OFFICER,
TAX PAYER SERVICES CIRCLE, NATTIKA, KERALA GST DEPARTMENT,STATE TAX COMPLEX, POOTHOLE P.O.,
THRISSUR, PIN – 680 004.

3 THE INTELLIGENCE OFFICER,
[NOW STATE TAX OFFICER], SQUAD NO.I, COMMERCIAL TAXES[KSGST DEPARTMENT], THRISSUR, PIN – 680 004.

4 THE JOINT COMMISSIONER OF STATE TAX,
KERALA STATE GOODS & SERVICE TAX DEPARTMENT,
STATE TAX COMPLEX, POOTHOLE P.O, THRISSUR,
PIN – 680 004.

SMT. JASMIN M M (GP)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner was a registered dealer under the Kerala Value Added Tax Act, 2003 (the 'KVAT Act'). The petitioner has approached this Court being aggrieved by the fact that a refund due to the petitioner for the year 2016-17 (under the KVAT Act) as per Ext.P3 order has been adjusted against a demand under the KVAT Act for the assessment year 2015-16 at a time when a 2nd appeal is pending before the Kerala Value Added Tax Appellate Tribunal in respect of such demand. It is pointed out that the petitioner had already remitted 10% of the demand and going by the provisions of Section 60(1A) of the KVAT Act (as amended with effect from 01.04.2023), there is an automatic stay of recovery of the balance on deposit of 10% of the tax amount.

2. The learned Government Pleader submits that the fact of filing of the appeal and the deposit of 10% was not made known to the Assessing Authority, as a result of which the refund due to the petitioner for the year 2016-17 was adjusted against the demand for 2015-16.

3. The learned counsel appearing for the petitioner would submit that even after adjustment of the amount and without

giving any interest on the refund amount to the petitioner, the respondents are demanding interest in respect of the amount payable for the year 2015-16. It is submitted that this is clearly illegal considering the fact that the demand stands stayed on deposit of 10% at the time of filing the appeal before the Tribunal.

4. Having heard the learned counsel for the petitioner and the learned Government Pleader and having regard to the facts and circumstances of the case, I am of the view that this writ petition can be disposed of directing that the demand for interest shall be kept in abeyance till the matter is finally decided by the Appellate Tribunal. Though technically the refund due to the petitioner for the year 2016-17 could not have been adjusted against the demand for 2015-16 when there was a stay on account of the provisions contained in Section 60 (1A) of the KVAT Act, I am of the view that the issue need not be considered in this writ petition as it is the specific case of the learned Government Pleader that the refund came to be adjusted against the demand only on account of the fact that the Assessing Authority was not intimated regarding the filing of the appeal and the deposit of 10% of the tax demand. However, I am of the opinion that the demand for interest has to be kept in

abeyance pending the final decision of the Appellate Tribunal.

5. Accordingly, this writ petition will stand disposed of directing that the demand for interest out of the liability assessed against the petitioner for the year 2015-16 shall not be demanded or collected from the petitioner pending disposal of the statutory appeal before the Tribunal for the year 2015-16.

The writ petition is ordered accordingly.

Sd/-
GOPINATH P.
JUDGE

DK

APPENDIX OF WP(C) 14951/2024

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE ORDER NO.VCI 330/2016-17 DATED 20-12-2016 ISSUED BY THE 3RD RESPONDENT**
Exhibit P 2	**TRUE COPY OF THE APPEAL ORDER NO.52/17 DATED 26-02-2021 ISSUED BY THE JOINT COMMISSIONER (APPEALS) STATE GST DEPARTMENT, THRISSUR**
Exhibit P3	**TRUE COPY OF THE ORDER NO.VCI 330/2016-17 DATED 05-01-2022 ISSUED BY THE 3RD RESPONDENT**
Exhibit P4	**TRUE COPY OF THE COMMUNICATION NO. VCI 330/2016-17 DATED 16-11-2023 ISSUED BY THE SENIOR ENFORCEMENT OFFICER, ENFORCEMENT SQUAD, THRISSUR**
Exhibit P5	**TRUE COPY OF THE REQUEST DATED 5-01-2024 FILED BEFORE THE 2ND RESPONDENT**
Exhibit P6	**TRUE COPY OF THE REFUND ADJUSTMENT ORDER NO. 32080619496/2016-17/2015-16 DATED 11.4.2024 ISSUED BY THE 2ND RESPONDENT**