

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 33056 of 2007(I)

PETITIONER:

**MILAGE RUBBER INDUSTRIES, 93 OLAI,
J.N.NAGAR, THEVALLY, KOLLAM-691 009,
REPRESENTED BY ITS PROPRIETOR SRI.N.GOPINATHAN.**

**BY ADV. SRI.A.M.SHAFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR**

RESPONDENTS:

**1. ADDITIONAL SALES TAX OFFICER-II,
(ASSESSING AUTHORITY), SECOND CIRCLE,
KOLLAM-691 013.**

**2. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, (TAXES DEPT.), GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-1.**

BY GOVERNMENT PLEADER SRI.MATHEW GEORGE VADAKKEL

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

V.GIRI,J.

W.P (C) No. 33056 of 2007

Dated this the 30th November, 2007

J U D G M E N T

The petitioner is a dealer in tread rubber. For the assessment years 1990-1991 and 1991-1992, returns were filed by the assessee, inter alia, claiming the benefit of concessional rate of 3% on the sale of tread rubber by virtue of notification G. O(MS) 124/88/T.D dated 31.8.1988. Returns were rejected and assessments were completed holding that the petitioner is liable to remit tax at 10%. Apparently, proceedings under Section 45A of the KGST Act were also initiated and this resulted in Exhibit-P1 order imposing penalty.

2. Petitioner filed appeals against assessment orders and revisions against the order imposing penalty. As a condition for grant of stay the revisional authority required the petitioner to remit an amount of Rs.25,000/-, as evidenced by Exhibit-P2. This was remitted by the petitioner as evidenced by Exhibit-P3. Petitioner says that ultimately this Court had in TRC Nos.2202, 236 and 241 of 1998 answered the issue of rate of tax applicable to tread rubber for the period in question, in favour of the assessee. It seems that taking note of the same, the

petitioner's revision against the order imposing penalty was disposed of as per Exhibit-P4, setting aside the imposition of the penalty. This was then forwarded by the petitioner to the assessing authority as per Exhibit-P5, and the petitioner made a request for refund of the amount of Rs.25,000/- deposited as per Exhibit-P3. Petitioner pursued the request as evidenced by Exhibit-P6 series. They have not been considered so far. Hence the writ petition.

3. Learned Special Government Pleader, on instruction, submits that an amount of Rs.25,000/- due to the petitioner has not been refunded because larger amounts are due from the petitioner for the subsequent assessment years. It is stated that an amount of Rs.33,660/- plus interest is due from the petitioner for the assessment years 2001-2002 and 2002-2003.

4. In my view, even if this is correct, it does not enable the department to refuse to refund the amount deposited by the petitioner pursuant to an interim order passed by the revisional authority, in circumstances where the revision is ultimately allowed by the Deputy Commissioner. Of course, in stead of refund, the department is entitled to adjust the same against

any dues incurred by the same assessee for the subsequent years. If it is so done, the petitioner must be told about the same.

In the result, this writ petition is disposed of directing the 1st respondent to pass orders on Exhibit-P6 series, taking note of the remittance made by the petitioner, as evidenced by Exhibit-P3 and P4 order passed by the revisional authority in the light of the observations made herein above, within two months from the date of receipt of a copy of this judgment.

(V.GIRI, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007