



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 23RD DAY OF NOVEMBER 2023 / 2ND AGRAHAYANA, 1945

WP(C) NO. 38426 OF 2023

PETITIONER:

M/S. K.V. JACOB & SONS,
KALLAPPARA HOUSE, PALLIKKARA,
KUMARAPURAM P. O., MORAKKALA,
KUNNATHUNADU, ERNAKULAM DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER,
VARGHESE JACOB, PIN - 683565.

BY ADVS.

SRI. HARISANKAR V. MENON
SMT. MEERA V. MENON
SRI. R. SREEJITH
SMT. K. KRISHNA
SMT. PARVATHY MENON

RESPONDENTS:

- 1 THE DEPUTY COMMISSIONER (WORKS CONTRACT),
OFFICE OF THE JOINT COMMISSIONER,
STATE GOODS & SERVICES TAX DEPARTMENT,
MATTANCHERRY, KOCHI, PIN - 682002.
- 2 THE COMMISSIONER OF COMMERCIAL TAXES,
STATE GOODS & SERVICES TAX DEPARTMENT,
TAX TOWERS, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM, PIN - 695002.

BY ADV.

SMT. JASMINE M. M. - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No.38426 of 2023**

Dated this the 23rd day of November, 2023

JUDGMENT

1. The present writ petition has been filed impugning the Exhibit P-7 assessment order passed by the 1st respondent under the provisions of Section 25 (1) of the KVAT Act, 2003. Petitioner was registered dealer under the KVAT Act. During the year 2014-15 petitioner had reported total taxable turnover of Rs. 14,73,77,783/- and Rs. 10,72,90,836/- as per the annual return, total receipts reported was Rs. 14,73,77,783/- and in the audit report total receipt was shown as Rs. 1,26,04,412/-. since there was a difference between total receipt as shown in the audit report and the total taxable turnover mentioned in the return and the petitioner failed to reconcile the said difference, the Assessing Authority was of the view that the addition of 25% to be made on the contract receipt declared and the total sum thus would be assessed at 14.5%.

2. Petitioner was issued a Show Cause Notice on 15.10.2020 asking him to reply that why the assessment should not be completed by adding 25% in the contract receipts declared by the



assessee. The date of hearing was fixed in the said notice as 20.10.2020.

3. On 17.10.2020 a mail was received from the authorised representative of the petitioner Sri. Ramaswamy Suryanarayana Iyer stating that the assessment for the year 2014-15 was time barred.

4. subsequent to, another hearing notice dated 23.10.2020 issued to the petitioner/assessee in this regard. The authorised representative appeared on 23.11.2020 and reiterated the contention that the assessment was time barred and so he did not produced any details for the financial year 2014-15 as demanded in the show cause notice dated 15.10.2020. The authorised representative was also heard. The Assessing Authority considered the contention raised by the authorised representative regarding the assessment proceedings being time barred and held that as per the Finance Act, 2017, the time limit for completion of assessment has been extended from 5 to 6 years and hence the time limit for completion of assessment for the financial year 2014-15 would be up to 31.03.2021 and notice was well within the time prescribed by the Finance Act, 2017 and the contention of the authorised representative that the assessment proceedings were time barred



was rejected. As no other contention was raised and no materials were produced by the petitioner/assessee, the assessment was completed vide the Exhibit P-7 order dated 30.11.2020.

5. The learned Counsel for the petitioner submits that the impugned Exhibit p-7 order was passed in violation of the principles of natural justice as the petitioner was not given proper opportunity of hearing. The second contention of the learned Counsel for the petitioner is that the said impugned assessment order is against the law declared by this Court in the case of ***The Deputy Commissioner - III, Special Circle, State Goods and Services Tax Department, Kollam and the State of Kerala v. B. Mohanachandran Nair [W.A. No. 1757 of 2020] dated 03.11.2022.***

6. I find a little substance in the submission of the learned Counsel for the petitioner that there was violation of the principles of natural justice or the petitioner was not afforded with adequate opportunity of hearing. The facts as noted above would disclose that the petitioner was issued notices twice and the authorised representative was heard. But, he only submitted that the assessment proceedings were time barred and he did not address the issue on merits or produced any materials. Therefore, the



contention that the assessment order was time barred has no merit and rejected.

7. In respect of the next submission, it may be noted that the impugned order is dated 30.11.2020 and the petitioner has approached this Court after three years. The Judgment relied on by the learned Counsel for the petitioner is also dated 03.11.2022 and it was not before the Assessing Authority when the impugned order was passed. In view thereof, I do not find that the impugned order suffers from any illegality or has been passed in violation of the principles of natural justice.

8. It is well settled that when there is an alternative remedy of appeal provided even if the original authority has erred on law, the remedy against the order is to file an appeal under the statute and the writ petition before this Court. Hence, I find no ground to entertain this writ petition and it is hereby dismissed.

**Sd/-
DINESH KUMAR SINGH
JUDGE**

Svn



APPENDIX OF WP(C) 38426/2023

PETITIONER'S EXHIBITS

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| EXHIBIT P1 | COPY OF RETURN IN FORM NO.10B FILED BY THE PETITIONER FOR THE YEAR 2014-15 DTD. NIL |
| EXHIBIT P2 | COPY OF AUDIT REPORT IN FORM NO. 13 & 13A OF THE PETITIONER DTD. 24-06-2016 |
| EXHIBIT P3 | COPY OF E-MAIL SUBMITTED BY THE PETITIONER'S CHARTERED ACCOUNTANT DTD. 27-06-2016 |
| EXHIBIT P4 | COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 09-07-2020 |
| EXHIBIT P5 | COPY OF REPLY FILED BY THE PETITIONER DTD. 17-10-2020 |
| EXHIBIT P6 | COPY OF E-MAIL SUBMITTED BY THE PETITIONER'S CHARTERED ACCOUNTANT DTD. 30-10-2023 |
| EXHIBIT P7 | COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD. 30-11-2020 |
| EXHIBIT P8 | COPY OF JUDGMENT IN WA NO. 1757/2020 OF THIS HON'BLE COURT DTD. 03-11-2022 |