



2024:KER:71622

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 26TH DAY OF SEPTEMBER 2024 / 4TH ASWINA, 1946

WP(C) NO. 29226 OF 2022

PETITIONER:

SREEKUMAR B.S.,
AGED 57 YEARS
MOOKAMBIKA EXPORTS, CHITTAYAM, PANAYAM P.O.,
PERINAD, KOLLAM, PIN - 691601

BY ADV V.DEVANANDA NARASIMHAM

RESPONDENTS:

- 1 THE STATE TAX OFFICER,
SPECIAL CIRCLE, KERALA STATE GOODS & SERVICE TAX
DEPARTMENT, KOLLAM, PIN - 691002
- 2 THE COMMISSIONER,
KERALA STATE GOODS & SERVICE TAX DEPARTMENT, 9TH
FLOOR, TAX TOWER, KILLIPALAM, KARAMANA P.O.,
THIRUVANANTHAPURAM, PIN - 695002

OTHER PRESENT:

SMT. THUSHARA JAMES (SR GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 26.09.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner was a registered dealer under the Kerala Value Added Tax Act, 2003 and Central Sales Tax Act, 1956 (for short “KVAT Act and CST Act”). An assessment of the petitioner for the year 2015-16 was completed under Section 25(1) of the KVAT Act by Ext.P2 order dated 15.12.2018. In terms of Ext.P2 order, there was a demand for an amount of Rs.74,45,653.00/- (inclusive of interest of Rs.18,47,418/-). Surprisingly, yet another order, which is on record as Ext.P3 dated 29.03.2021 was issued for the same year (2015-16) under Section 25(1) of the KVAT Act where the demand on the petitioner was only a sum of Rs.40,912.00/-.

2. According to the petitioner, the petitioner opted to settle the demand on the basis of Ext.P3 order by making an application under the Amnesty Scheme of 2021 as also under the Amnesty Scheme of 2022. Since the applications filed by the petitioner for getting the benefit of the



Amnesty Scheme of 2021 and 2022 were not considered, the petitioner preferred Ext.P6 application for rectification under Section 66 of the KVAT Act praying that the assessment order issued on 15.12.2018 be recalled/set aside so as to enable the petitioner to settle the liability under the Amnesty Scheme on the basis of the demand created in terms of Ext.P3 order. That application of the petitioner has been rejected by Ext.P7 order dated 29.8.2022 wherein it is stated that the assessment of the petitioner for the year 2015-2016 was originally completed by Ext.P2 order on the basis of certain observations by the internal audit team. It is stated that, unfortunately, the original assessment file got misplaced and without noticing the fact that the assessment had already been completed, a fresh assessment order came to be issued under Section 25(1) of the KVAT Act (Ext.P3). It is also stated in Ext.P7, that the petitioner also did not bring to the notice of the officer who issued Ext.P3 that the assessment had already been completed by passing Ext.P2 order. It was held that



the prayer for rectification is not maintainable as the rectification is only possible in case of error apparent on the face of the record. In other words it was found that an application for rectification could not be filed for recalling/withdrawing the earlier assessment order dated 15.12.2018.

3. Sri. Devananda Narasimham, the learned counsel appearing for the petitioner vehemently contends that the earlier assessment of the petitioner was completed in a hasty manner and without verifying the records. It is submitted that it is in such circumstances that a fresh assessment was completed under the provisions of Section 25(1) of the KVAT Act and on verification of the documents and records produced by the petitioner, the assessment of the petitioner was completed resulting in a demand for Rs.40,912/- (including interest). It is submitted that in such circumstances, it was open to the petitioner to apply for an amnesty in terms of the provisions contained in the Amnesty Schemes of 2021 and 2022. It is submitted that



the petitioner was also entitled to maintain an application under Section 66 of the KVAT Act for recalling or setting aside Ext.P2 assessment order in the peculiar facts and circumstances of this case. The learned counsel for the petitioner referred to the provisions of Section 25(1) of the KVAT Act to show that there is nothing in the provision which would indicate that a subsequent order could not be passed by the Assessing Authority.

4. The learned Senior Government Pleader appearing for the respondents would submit on instructions that, it is clear from Ext.P7 order itself that the second order (Ext.P3) for the year 2015-2016 came to be issued only on account of a mistake and without noticing the fact that the assessment for that year had already been completed by Ext.P2 order. It is pointed out that it can be seen from Ext.P7 order that the petitioner also failed to bring to the notice of the officer that an earlier assessment had been completed for the year 2015-2016. It is submitted that the petitioner also did not file any appeal against Ext.P2 order.



It is submitted that the wording of the provisions of Section 66 of the KVAT Act would clearly show that the prayer of the petitioner for recalling Ext.P2 order is not maintainable.

5. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader, I am of the view that the petitioner is not entitled to any relief in the present writ petition. It is not disputed before that Ext.P2 order, which is issued under Section 25(1) of the KVAT Act on 15.12.2018, has not been set aside or modified in any proceedings. If that be the case, the provisions of Section 25(1) of the KVAT Act does not permit the Assessing Authority to pass a fresh order for the same assessment year. If such course of action is permitted, it would result in contradictory orders being passed without the original order being set aside or modified in a manner known to law. In such circumstances, I have no hesitation to hold that the second assessment order (Ext.P3) dated 29.03.2021 is non-est in law and cannot be sustained.



Therefore, in that view of the matter, it is not necessary to consider the question as to whether the prayer to recall the earlier assessment order dated 15.12.2018 was maintainable under Section 66 of the KVAT Act.

6. The learned Government Pleader submits that since there is a amnesty scheme now in force, it is open to the petitioner to file an application for amnesty, if he decides to do so. It is pointed out that if the petitioner were to do so based on the liability determined as per Ext.P2, the approximate amount to be paid by the petitioner under amnesty would (approximately) be Rs.22.39 lakhs.

7. In the light of the above findings, I hold that the petitioner is not entitled to any reliefs as sought for in the writ petition. The writ petition will stand dismissed. However, it is made clear that if the petitioner wishes to avail the benefit of the Amnesty Scheme, that is currently in force, it will be open to the petitioner to do so.

8. However, there is yet another aspect in the matter. The facts of the case reveal that though the petitioner did



not file any appeal against Ext.P2 order, for reasons already noticed, a second order came to be issued on 29.3.2021 where the demand raised on the petitioner was only a sum of Rs.40,912/- together with interest, in the place of a demand of Rs.74,45,653.00/- along with the interest, in terms of Ext.P2 order. According to the petitioner, he preferred an application for settling the liability of Rs.40,912/- under the Amnesty Scheme of 2021 as also under the Amnesty Scheme of 2022. When such applications were not processed, he filed Ext.P6 application for rectification. That application for rectification was rejected on 29.08.2022 and the petitioner was before this Court on 09.9.2022, that is, immediately after Ext.P7 order was passed. Though I found that the second order of assessment namely (Ext.P3) is non-est in law, also taking into consideration the observations in Ext.P7 order, I am of the view that the petitioner can be permitted to file an appeal against Ext.P2 order if he is so aggrieved, provided such appeal is filed within a period of



two weeks from the date of receipt of a certified copy of this judgment. If such an appeal is filed within the time as aforesaid the first Appellate Authority under the KVAT Act shall consider the appeal as one as filed in time and shall dispose of the appeal in accordance with the law after affording an opportunity of hearing the petitioner. The Appellate Authority shall endeavor to dispose of the appeal, within a period of three months from the date of which it is filed.

The writ petition is disposed as above.

**Sd/-
GOPINATH P.
JUDGE**

**APPENDIX OF WP(C) 29226/2022****PETITIONER'S EXHIBITS**

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| EXHIBIT-P1 | TRUE COPY OF FORM 10 ANNUAL RETURNS E-FILED THROUGH KVATIS ON 31-03-17 FOR THE YEAR 2015-16. |
| EXHIBIT-P2 | TRUE COPY OF ASSESSMENT ORDER PASSED U/S 25(1) OF THE KVAT ACT ON 15-12-18 FOR THE YEAR 2015-16 BY 1ST RESPONDENT TO THE PETITIONER. |
| EXHIBIT-P3 | TRUE COPY OF ASSESSMENT ORDER PASSED BY 1ST RESPONDENT DATED 29-03-21 FOR THE YEAR 2015-16 ON THE PETITIONER. |
| EXHIBIT-P4 | TRUE COPY OF OPTION FOR AMNESTY SCHEME-2021 DATED 30-11-21 E-FILED FOR 2015-16 BEFORE 1ST RESPONDENT. |
| EXHIBIT-P5 | TRUE COPY OF OPTION FOR AMNESTY SCHEME-2022 DATED 17-08-22 E-FILED FOR 2015-16 BEFORE 1ST RESPONDENT. |
| EXHIBIT-P6 | TRUE COPY OF RECTIFICATION APPLICATION FILED U/S 66 OF THE KVAT ACT ON 25-08-22 BEFORE 1ST RESPONDENT FOR THE YEAR 2015-16. |
| EXHIBIT-P7 | TRUE COPY OF THE REJECTION ORDER DATED 29-08-22 ON RECTIFICATION APPLICATION DATED 25-08-22 PASSED U/S 66 OF THE KVAT ACT BY 1ST RESPONDENT FOR THE YEAR 2015-16. |