IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 11049 of 2012 (E)

PETITIONER :

HAKEEM K.,
S/O.LATE U.AHAMMED KABEER,
U.A.K. HOUSE, NAVAKKODE
KODUVAYUR, PALAKKAD.

BY ADVS.SRI.V.V.ASOKAN
SRI.K.I.MAYANKUTTY MATHER
SMT.RUKHIYABI MOHD. KUNHI

RESPONDENT(S) :
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1. DEPUTY COMMISSIONER,
   COMMERCIAL TAXES, PALAKKAD - 678001.

2. ASSISTANT COMMISSIONER (ASSESSMENT),
   SPECIAL CIRCLE, PALAKKAD-678001.

3. ASSISTANT COMMISSIONER (ASSESSMENT)- I.
   SPECIAL CIRCLE, PALAKKAD - 678001.

4. ASSISTANT COMMISSIONER (ASSESSMENT) II,
   SPECIAL CIRCLE, PALAKKAD-678001.

5. STATE OF KERALA,
   REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT
   SECRETARIAT, THIRUVANANTHAPURAM - 695001.

R1 TO R5 BY GOVT. PLEADER SRI. LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 11049 of 2012 (E)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	:	COPY OF THE RETURN (AY-2003-04) DATED 30.4.2004.
EXT.P2		COPY OF THE RETURN (AY-2004-05) DATED 29.4.2005.
EXT.P3		TRUE COPY OF THE NOTICE ISSUED BY THE FAST TRACK TEAM NO.I, PALAKKAD (AY-2003-04) DATED 13/2/2012.
EXT.P4		TRUE COPY OF THE NOTICE ISSUED BY THE FAST TRACK TEAM NO.1, PALAKKAD (AY-2004-05) DATED 13/2/2012.
EXT.P5		TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 24/3/2012.
EXT.P6		TRUE COPY OF THE RELEVANT EXTRACT OF THE FINANCE BILL, 2011 DATED 01/04/2011.
EXT.P7		TRUE COPY OF THE RELEVANT EXTRACT OF THE FINANCE BILL, 2011 DATED 01/04/2011.
EXT.P8		COPY OF THE ASSESSMENT ORDER PASSED BY THE FAST TRACK TEAM FOR AY 03-04 DATED 29.6.2012.
EXT.P9		COPY OF THE ASSESSMENT ORDER PASSED BY THE FAST TRACK TEAM FOR AY 04-05 DATED 29.6.2012.
EXT.P10		COPY OF THE INTERIM ORDER PASSED BY THIS HON'BLE COURT IN WP(C) NO. 5067/2012 DATED 24.7.2012.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 11049 of 2012

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Dated this the 27th day of November, 2015

JUDGMENT

The petitioner's father was a dealer in live chicken and other products. He died in the year 2006. Thereafter, although the petitioner was not continuing the business that was carried on by his late father, the respondents sought to complete the assessment for the assessment years 2003-04 and 2004-05 against the petitioner, in his capacity as the legal heir of the erstwhile dealer. Accordingly, Exts.P3 and P4 notices dated 13.02.2012 were issued to the petitioner proposing to complete the assessment for the assessment years 2003-04 and 2004-05 under Section 17D of the Kerala General Sales Tax Act (for short "KGST Act"). The petitioner therefore, approached this Court, through the present writ petition, impugning the notices, inter alia on the ground that the notices were issued beyond the time contemplated under Section 17 of the KGST Act, which mandated that assessments had to be completed within five years from the expiry of the year, to which the assessment related. During the pendency of the writ petition, the respondents proceeded to finalise the assessment pursuant to Exts.P3 and P4, and issued Exts.P8 and P9 assessment orders dated 29.06.2012. The petitioner, therefore, amended the writ petition to incorporate a challenge against Exts.P8 and P9 orders as well. The sole contention of the petitioner in his challenge against Exts.P8 and P9 orders is that, the said orders have been passed beyond the period of limitation prescribed under Section 17 of the KGST Act. It is the further contention of the petitioner that, although by the second Finance Bill of the year 2011, there was a specific provision introduced enabling the respondents to complete the assessments upto 2005-06, that were pending as on 31.03.2011, by 31.03.2012, the facts in the petitioner's case would clearly indicate that the said provision would not apply in respect of Exts.P8 and P9, since there were no assessments that were pending in relation to the assessment years 2003-04 and 2004-05 as regards the petitioner, when the provisions of Section 17(6) were amended by the second Finance Bill of 2011.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that

going by the provisions of Section 17 of the KGST Act, the assessments in relation to the petitioner for the assessment years 2003-04 and 2004-05, ought to have been completed by 31.03.2009 and 31.03.2010 respectively. As on those dates, it is not in dispute, that a notice under Section 17D or under Section 17 had not been served on the petitioner in respect of the said assessment years. The effect of this inaction on the part of the respondents was that, as on 31.03.2009 and 31.03.2010, the assessments in relation to the petitioner for the assessment years 2003-04 and 2004-05 became time barred. Although the Finance Act 2011 amended Section 17(6) of the KGST Act, so as to enable the respondents to complete the assessments upto the assessment year 2005-06, that were pending as on 31.03.2011, before 31.03.2012, the same would not come to the aid of the respondents in the instant case since on the date of the amendment introduced by the Finance Act, 2011, there was no assessment of the petitioner pertaining to the assessment years 2003-04 and 2004-05, that was pending. I therefore, find that the orders impugned in the writ petitions namely, Exts.P8 and P9, cannot be legally sustained and I quash the same. In taking the aforesaid view, I am fortified by the decision of a Division Bench of this Court in Commissioner of Agricultural Income Tax v. Panampunna Estates **[1997 (2) KLT 206]** where also, in the context of an assessment under the Agricultural Income Tax Act, 1950, the Court took note of the fact that the three year period for completing the assessment had already expired by the time the amendment extending the period of three years to five years was given effect to in the Agricultural Income Tax Act. It was held that the subsequent amendment in the Act could not have conferred the assessing officer, with power to assess in cases, where the assessments had already become barred by efflux of time. Resultantly, the writ petition succeeds with consequential reliefs to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /28.11.15