

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 31567 of 2010 (U)

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PETITIONER(S) :

M/S.KOONISSERY ELECTROLAND  
THRISSUR ROAD,KECHERY,, THRISSUR DISTRICT,  
REPRESENTED BY ITS, MANAGING PARTNER, K.K.RAJU

BY ADVS.SRI.HARISANKAR V. MENON  
SMT.MEERA V.MENON  
SRI.MAHESH V.MENON

RESPONDENT(S) :

1. THE COMMERCIAL TAX OFFICER,  
KUNNAMKULAM P.O., KUNNAMKULAM,  
THRISSUR DISTRICT-680 014.
2. STATE OF KERALA,  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT G.P.O.,  
THIRUVANANTHAPURAM-695 001.

R1 BY GOVERNMENT PLEADER SMT.RINNY STEPHEN CHAMAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS:

- EXT. P1        A TRUE COPY OF LETTER SUBMITTED BY THE PETITIONER  
BEFORE THE 1ST RESPONDENT.
- EXT. P2        A COPY OF APPLICATION IN FORM NO.25A SUBMITTED BY THE  
PETITIONER.
- EXT. P3        A TRUE COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.
- EXT. P4        A TRUE COPY OF LETTER SUBMITTED BY THE PETITIONER.
- EXT. P5        A COPY OF STOCK INVENTORY REPORT OF THE PETITIONER.
- EXT. P6        A TRUE COPY OF MEDICAL CERTIFICATE ISSUED BY DR.KOSHY  
GEORGE.
- EXT. P7        A TRUE COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

rvs.

C.K.ABDUL REHIM, J

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W.P.(C). No.31567 OF 2010

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Dated this the 6<sup>th</sup> day of January, 2015

JUDGMENT

Question arising for consideration in this Writ Petition is as to whether a presumptive dealer under Section 6(5) of the Kerala Value Added Tax Act, 2003, when changes over to payment of tax under regular assessment under Section 6(1) is entitled to credit of input tax, if he has not made application for such credit within the time limit stipulated under Sub Rule 7 of Rule 12 of the Kerala Value Added Tax Rules 2005.

2. The petitioner, who is a dealer opted for assessment under Section 6(5), had crossed the limit of the turnover of Rs.50 lakhs as on 31.3.2010. He submitted Exts.P1 and P2 applications as contemplated under Rule 12 (7) before the 1<sup>st</sup> respondent on 29.4.2010. The 1<sup>st</sup> respondent issued Ext.P3 notice intimating the proposal to reject the application with respect to the claim for credit of input tax paid on the opening stock, stating the reason that

the application was not submitted within 15 days as stipulated in Rule 12(7) and for the reason that the stock inventory submitted was not duly certified by a Chartered Accountant or Cost Accountant. The petitioner was called upon to submit objections if any against the proposal for rejection of application. In Ext.P4 objections, the petitioner contended that the delay was caused only because the Managing Partner was laid up during the relevant time with orthopedic disorders. A Medical Certificate was also produced in support of the above contention. With respect to the defect in submitting the stock inventory, it was rectified by submitting an audited stock inventory, certified by a Chartered Accountant. But the 1<sup>st</sup> respondent had rejected the objections and confirmed the proposal for rejecting the claim for credit of the input tax, by observing that there occurred delay in submitting the application in Form No.25A and also that the subsequent production of stock inventory cannot be accepted. It is aggrieved by Ext.P7 proceedings issued by the 1<sup>st</sup> respondent in this regard, the petitioner is approaching this court.

3. Rule 12 of the Kerala Value Added Tax Rules, 2005 deals with determination of input tax credit with respect to the opening stock. It provides an opportunity with respect to a dealer who had opted for assessment under the provisions of Section 6(5), to change over to payment of tax under section 6(1) and to claim credit of input tax with respect to the opening stock, as on the date of such change over. Sub Rule (8) provides that, if the dealer makes an application as stipulated under sub Rule (7), the assessing authority has to verify such claim and shall permit the dealer to claim credit of input tax with respect to such goods held as opening stock as on the date of the change over, in 3 equal monthly installments, commencing from the return period subsequent to the date of order allowing such input tax credit. Admittedly the petitioner herein had crossed the limit of the turnover under Section 6(5), as on 31.3. 2010. It was mandatory on the part of the petitioner to submit an application for input tax credit in Form No.25A, within a period of 15 days from the said date. But the petitioner had submitted the claim only on 29.4.2010,

which is after 14 days of the period stipulated. It is conceded that the petitioner was already granted registration as a dealer coming within the purview of Section 6(5). Question arises as to whether the assessing authority was right in rejecting the claim for credit of input tax based on the fact that the petitioner had failed to submit the claim within the time stipulated.

4. Learned counsel for the petitioner raised contention that the assessing authority is vested with inherent power to condone the delay and to allow the application. He had placed reliance on Section 29(2) of the Limitation Act, 1963, wherein it is provided that when a special law prescribes a time limit different from the period prescribed under the Schedule of the said Act, the provisions of Section 3 will apply as if it is the period prescribed by the schedule and the bar of limitation will apply. In such cases the provisions contained in Section 4 to 24 shall apply to the extent to which they are not expressly excluded by the special law or local law. It is contented that in view of Section 29(2) the provisions of

section 5 will apply, because there is no expressed exclusion of the said provision in the Kerala Value Added Tax Act. Counsel had placed reliance on a decision of the Hon'ble Supreme Court in *Income Tax Officer v M.K. Mohammed Kunhi* [1969 (2). S.C.R. 65]. There the Hon'ble Apex Court was dealing with a question as to whether the Appellate Tribunal under the Income Tax Act has got powers to grant stay against recovery of the amount of penalty, pending disposal of the appeals. It was observed that, the powers which have been conferred on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all the powers and duties incidental and necessary to make the exercise of such powers in fully effective manner. Therefore it is contended that, eventhough there is no express provision providing the authority in granting condonation of delay, such power has to be deemed as existing as incidental or corollary to the widest powers provided for grant of input tax credit.

5. Contentions raised on behalf of the petitioner was

met by the learned Government Pleader arguing that, when the statute confers any special benefit or concession through any particular provision, those provisions has to be interpreted strictly and unless there is express powers conferred with respect to relaxation of any of the conditions incorporated therein, the court cannot interfere or direct granting of any such benefits to a person who has not complied with the requirements strictly. It is specifically contended that provisions of Section 5 of the Limitation Act will not apply in the case at hand and the authority is not empowered to grant condonation of delay, since no specific power is conferred on the authority in that respect. He had placed reliance on a decision of the Hon'ble Supreme Court in *Muhamd. Ashfaq v State Transport Appellate Tribunal UP and Others* [1976 KHC 949]. Referring to Section 58(3) of the Motor Vehicles Act 1939, the Hon'ble Apex Court observed that, when the provisions confers a discretion on the RTA to entertain an application for renewal of the permit when it is made beyond the time limit specified in the proviso to Sub Section (2), but not more than 15 days late,

the discretion has to be exercised considering whether there was sufficient cause in not making the application in time. The Hon'ble Supreme Court considered the question whether Section 5 of the Limitation Act 1963 can be applied to empower the RTA to entertain an application if it is delayed by more than 15 days. The Apex Court found that Section 29 of the Limitation Act will not apply because Sub Section (3) of Section 58 expressly exclude further extension of the time under Section 5 and therefore Section 5 cannot be availed for seeking condonation of delay beyond 15 days. But in the case at hand, there is no express exclusion as contained in Section 68(3) of Motor Vehicles Act.

6. Learned Government Pleader had further pointed out a Division Bench decision of this court in Commissioner of Income Tax Kerala v P.C. Vareedkutty [1970 KLT 848]. It is held that Section 5 of the Limitation Act 1963 would not apply with respect to a proceedings before the Income Tax Appellate Tribunal. It was found that an application under Section 5 of the Limitation Act will lie only for the

condonation of delay in filing application or appeal before a court and Section 5 cannot apply to a proceedings before the Tribunal like the Income Tax Appellate Tribunal. In a recent decision of this court in *Plasa (M/s) v Joint Commissioner of Central Exercise and Others* [2014 (2) KHC 72 (DB)] it is held that, the Appellate Authority under the Service Tax cannot consider an application for condonation of delay when a particular period is prescribed as condonable period under Section 85(3) of the Finance Act. There also reliance was placed on the decision of the Apex court to the effect that Section 5 of the Limitation Act will not apply when a specific provision is made in the relevant statute prescribing the period of limitation. It was observed that the Appellate Authority has no power to condone the delay beyond the period prescribed under the Act.

7. Learned Government Pleader further pointed out a decision rendered by a learned Judge of this court in *Dileep Kumar v Assistant Commissioner of Income Tax* [2000 (3) KLT 626] referring to the special scheme, 'Kar Vivad

Samadhan Scheme', which provides for voluntary disclosure of income, it is held that it is a self contained scheme and the High Court cannot declare that a person is entitled to the benefit of the scheme, if there is delay in paying the amount as stipulated. Referring to the above cited ruling it is contended that, the Assessing Authority has no power conferred to consider the claim for input tax credit by condoning the delay in submitting the claim, because there is no express or inherent power conferred on the said authority for such condonation.

8. Government Pleader had also placed reliance on a Division Bench of this court in State of Kerala V Kalyan Tourist Home [2011 (4) KLT 423], wherein it is held that under the Kerala General Sales Tax Act, 1963 an application opting for compounding cannot be entertained by condoning the delay because the compounding scheme is an exemption of power which does not authorise the Assessing Officer to condone the delay beyond the end of the assessment year concerned. It is held that the payment of tax under the compounding scheme is

alternative to the regular assessment based on the turnover and when regular assessment is completed there is no scope for entertaining an application for compounding, thereafter.

9. Reliance was also placed in yet another decision of this court in Kerala Motor Transport Workers' Welfare Fund Board v Government of Kerala [2001 (1) KLT 608], referring to Section 8(5) of the Kerala Motor Transport Workers' Welfare Fund Act, 1985 a Division Bench of this court observed that, the right of appeal is a creature of the statute and the same has to be considered according to provisions of the said statute. This court repelled the contention that once a right of appeal is provided the Appellate Authority has got an implied power to condone delay in filing the appeal and to entertain the appeal. The Act does not provide entertainment of appeal filed beyond the time limit stipulated. In the absence of such provision expressly conferring power on the Appellate Authority to entertain an appeal after the period of limitation prescribed under the Statute, there is no implied power on the

Appellate Authority other than what is prescribed under the Statute and the provisions of Limitation Act are not made applicable with respect to the Statute in question.

10. Learned counsel for the petitioner had drawn attention of this court to an anomalous situation provided under Rules 46 and 47, wherein refund of input tax credit is permitted with respect to inter state sale as well for export of goods. It is pointed out that the refund for input tax credit is allowable in such cases within a period of 30 days under Rule 46 and within a period of one year under Rule 47. But in the case at hand the group of assesseees who are seeking change over from the presumptive assessment are comparatively small dealers, having very lessor turnover and there is no justification in denying input tax credit with respect to such dealers. But it is to be noticed that the petitioner is not challenging the relevant provisions of the Kerala Value Added Tax Act Rules, insisting the time limit for making the such claim. This court cannot consider the legislative intent in fixing the time limit as 15 days or in not providing any provision for

condonation of delay. Even assuming that there occurred any lacuna in the provisions, this court cannot fill up such lacuna in any manner granting relief to the petitioner. It is to be conceded that no provisions contained in the Act or Rules conferring power on the competent authority to entertain any claim for input tax credit in the case of assesseees changing over to the regular assessment under Section 6(1), if such claim is made beyond a period of 15 days stipulated under Rule 12(7). It cannot be held that there is any inherent or corrolary power vested with the authority in condoning the delay occurred in submitting such claims, especially when the input tax credit is permitted as a benefit or concession under the scheme of the statute. Going by the legal precedents as well as the provisions contained in Section 5 of the Limitation Act, 1963 it cannot be held that the said provision will apply in the case of the application for input tax credit submitted before the Assessing Authority under the Kerala Value Added Tax Act.

11. For the reasons mentioned as above, there is no

valid reason to hold that the application submitted by the petitioner claiming credit of input tax ought to have been considered and allowed. The impugned order rejecting the said claim does not warrants interference.

Accordingly the writ petition fails and the same is hereby dismissed.

Sd/-  
C.K.ABDUL REHIM, JUDGE.

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