

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 32172 of 2013 (V)

PETITIONER:

ABDUL NAZAR N.M, AGED 40 YEARS,
S/O.LATE N.M.MOIDY AND SMT.FATHIMA N.
VELLNTHODY HOUSE, CHENOLI P.O., PERAMBRA
NOCHAD VILLAGE, KOYILANDI TALUK, KOZHIKODE-673525.

BY ADV. DR.K.P.PRADEEP

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY
TAX DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.

2. COMMERCIAL TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES, PERAMBRA
KOZHIKODE-673525.

3. TAHSILDAR (RR)
TALUK OFFICE, VADAKARA, DEPARTMENT OF REVENUE
KOZHIKODE-673 101.

R BY GOVERNMENT PLEADER SRI GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-11-2015, ALONG WITH WPC. 30866/2013, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 32172 of 2013 (V)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE ORDER IN APPEAL IN STA 293 TO 297/2000
DT.30-3-2000 ISSUED BY THE ADDL.APPELLATE ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE.

EXHIBIT P2 : TRUE COPY OF THE COMMUNICATION NO.33190034/92-93, 93-
94,94-95, AND 95-96 DT.13-9-2012 ISSUED BY THE COMMERCIAL TAX
OFFICER, PERAMBRA.

EXHIBIT P3 : TRUE COPY OF THE ASSESSMENT ORDER NO.33190034/92-93
DT.8-5-2000 ISSUED BY THE SALES TAX OFFICER, PERAMBRA.

EXHIBIT P4 : TRUE COPY OF THE ASSESSMENT ORDER NO.33190034/93-94
DT.26-5-2000 ISSUED BY THE SALES TAX OFFICER, PERAMBRA.

EXHIBIT P5 : TRUE COPY OF THE ASSESSMENT ORDER NO.33190034/94-95
DT.31-3-2000 ISSUED BY THE SALES TAX OFFICER, PERAMBRA.

EXHIBIT P6 : TRUE COPY OF THE ORDER NO.D 5452/01-1 DT.1-10-2001
ISSUED BY THE REVENUE DIVISIONAL OFFICER, KOZHIKODE.

EXHIBIT P7 : TRUE COPY OF THE ORDER NO.D-2528/02(1) DT.5-6-2002
ISSUED BY THE REVENUE DIVISIONAL OFFICER, KOZHIKODE.

EXHIBIT P8 : TRUE COPY OF THE COMMUNICATION NO.24855/B2/2012/TAX
DEPT.DT-28-11-2013 ISSUED BY R1.

EXHIBIT P9 : TRUE COPY OF THE LETTER DT.17-12-2013 SUBMITTED BY
MRS.FATHIMA, MOTHER OF THE PETITIONER TO R2.

EXHIBIT P10 : TRUE COPY OF THE APPLICATION DT.17-12-2013 SUBMITTED BY
MRS.FATHIMA, MOTHER OF THE PETITIONER TO R2.

RESPONDENT(S) ' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P.(C) Nos.32172 & 30866 of 2013

Dated this the 13th day of November, 2015

JUDGMENT

W.P.(C) No.32172 of 2013 :

The petitioner is the son of late N.M.Moidy, who was a dealer with sales tax registration. The sales tax officer had finalised the assessment for the years 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96, under Section 17(3) of the Kerala General Sales Tax Act, 1963 (KGST Act) on best of judgment basis. The following amounts were found due from late Moidy towards sales tax.

Year	Turnover	Tax
1991-92	Rs.6,00,000	Rs.45,000
1992-93	Rs.4,57,910	Rs.36,531
1993-94	Rs.25,74,900	Rs.2,05,770
1994-95	Rs.30,74,900	Rs.1,53,865
1995-96	Rs.33,24,900	Rs.1,66,370

2. As the assessee failed to pay the arrears of sales tax, revenue recovery proceedings were resorted to, for realisation of the same. The assessee did not respond to the demand notice issued on 27.4.1998 or the notices for attachment issued on

21.2.2000. Thereupon, his property having an extent of 20 cents was sold in public auction held on 13.3.2001 and the sale was confirmed as per Ext.P6 on 1.10.2001. Another extent of 11 cents of his property was also put to sale on 29.11.2001, towards the arrears and that the sale was confirmed as per Ext.P7 on 5.6.2002.

3. In the meanwhile, the assessee-the petitioner's father, had filed appeals against the orders of assessment. By Ext.P1 order dated 30.3.2000, the appellate authority set aside all the assessment orders and remanded the matter for the years 1991-92, 1993-94, 1994-95 and 1995-96 to the assessing authority. The assessment for the year 1992-93 was modified. Thereafter the assessing authority issued Ext.P3 order dated 8.5.2000 modifying the assessment for the year 1992-93 and by Ext.P4 order dated 26.5.2000, re-assessment was made for the year 1993-94. Assessment for the year 1994-95 was revised, as per Ext.P5. Ext.P2 letter dated 13.9.2012 of the Commercial Tax Officer, Perambra shows that as per the orders of modified assessment issued on 8.5.2000, 26.5.2000, 31.3.2003 and 31.3.2003, the arrears due from the assessee was reduced considerably and a sum of Rs.71,553/- was due for the

assessment year 1992-93, a sum of Rs.9,854/- was due for the assessment year 1993-94, a sum of Rs.8,400/- was due for the assessment year 1994-95 and no amount was due for the year 1995-96.

4. But in the meanwhile, proceedings under the Revenue Recovery Act, 1968 were already initiated for revenue recovery of the arrears due from the petitioner's father on the basis of the assessment already made, under Section 17(3) of the KGST Act. Ext.P6, confirmation of sale issued on 5.6.2002, issued under Section 54 of the Revenue Recovery Act, shows that the property was put for public auction on 13.3.2001 towards the arrears of sales tax due from the petitioner's father. Government of Kerala purchased the same for Rs.1/-, since there were nobody to bid the property in auction. As there were no applications to set aside the sale, the sale was confirmed on 5.6.2002. Similar was the case with respect to 11 cents of property put for sale by public auction on 29.11.2001, which was also purchased by the Government for Rs.1/-.

5. The petitioner's father passed away on 12.5.2003. Thereafter his mother Smt.Fathima approached the revenue authorities for reconveyance of the land. She thereafter

approached this Court and this Court upheld the action of revenue authorities. Thereafter, she approached the sales Tax authorities requesting to settle the matter under the Amnesty Scheme. When they did not permit the same, saying that the land in question was already purchased by the Government, she approached the Minister for Finance. Thereafter she received Ext.P8 letter dated 28.11.2013 from the Government informing that, in order to avail the benefit of Amnesty Scheme the arrears along with interest can be paid before 31.12.2013 and thereafter she can approach the Revenue Department in order to get the re-conveyance of the bought-in-land.

6. Pursuant to that letter, she approached the Commercial Tax Officer submitting Ext.P9 representation and Ext.P10 application, requesting to settle the case as mentioned in Ext.P8 letter, under the Amnesty Scheme. But she was again told that her case cannot be considered under the scheme, since the sale of the property and its confirmation were already over.

7. Thereafter the petitioner, who is one of the legal heirs of the deceased defaulter, took up the matter and filed this Writ Petition, seeking for a direction to the 2nd respondent to grant him the benefit of Amnesty Scheme provided under Section 23B

of the Kerala General Sales Tax Act, 1963 with respect to the arrears of sales tax demanded in Ext.P2 communication and Ext.P10 application. Simultaneously, he seeks a declaration that restriction imposed on the defaulters, under the KGST Act and the Central Sales Tax Act, 1956, whose properties were proceeded under Section 50 of the Kerala Revenue Recovery Act restraining them from settling the tax arrears under the Amnesty Scheme covered by Section 23B(1) of the KGST Act as amended in Kerala Finance Act, 2013, is discriminatory and unconstitutional.

8. The case of the petitioner in **W.P.(C) No.30886 of 2013** is as follows:

The petitioner herein is the assessee himself. Arrears of sales tax are due from him for the years 1992-1993 and 1993-1994. In this case also, the assessment was completed under Section 17(3) of the KGST Act as per Ext.P1 order dated 30.6.1997. Notice in respect of the arrears was issued as per Ext.P6 on 16.12.1998. Thereafter, certain modifications were effected and the revenue recovery certificate was modified as per Ext.P10 on 11.03.1999 as one for recovery of a sum of Rs.30,264/- for the year 1993-'94. By Ext.P11 order dated

17.3.1999, the Sales Tax Officer made re-assessment for the year 1992-'93 and the tax payable along with surcharge was found as Rs.8,296/-. Following the modification, the Sale Tax officer issued fresh requisition Ext.P12 dated 18.11.2004, for a sum of Rs.17,224/-. A demand notice was also issued for the same, on 6.1.2005. It was followed by Ext.P14 notice of attachment under Section 36 of the Revenue Recovery Act in respect of his property having an extent of 0.2430 hectare in Re-survey No.280/1 in Block No.57 of Cherukattur Village. Thereafter, Ext.P15 sale notice was issued for realisation of a sum of Rs.23,100/- for the years 1992-'93 and 1993-'94. Ext.P15 is the notice issued under Section 49(2) of the Revenue Recovery Act for the sale of .2430 hectares of land in Resurvey 280/1 in Block no.57 in Cheruvattur village, in public auction to be held on 4.3.2006, for realisation of Rs.23,000/- for the assessment years 1992-93 and 93-94. On 4.3.2006, no bidder was present. Therefore, the Government purchased the land for Rs.1/-. That sale was confirmed. Ext.P16 certificate issued on 2.4.2013, shows that the arrears pending realisation under the Revenue Recovery Act before the District Collector, Wayanad, was (as per the office records) Rs. 36274/-(Rs.25,520/-) for the year

1992-'93 and a sum of Rs.10,754/- for the year 1993-'94 i.e including surcharge and interest upto 31.3.2013. Seeing this, the petitioner submitted Ext.P17 application on 9.12.2013 for settling the matter under the Amnesty Scheme. But the Commercial Tax Officer rejected the application as per Ext.P18 order, stating that the revenue recovery proceedings for realising the arrears of tax were already finalised and his property was already purchased by the Government as bought in land. The petitioner therefore, while challenging Ext.P18, seeks all the reliefs as sought by the petitioner in W.P.(C) No.32172 of 2013.

9. The Sub Collector, Mananthavady issued an order dated 21.11.2011 confirming the sale. As against the confirmation of sale, the petitioner has already approached the Commissioner for Land Revenue, by filing a revision petition under Section 83(1) of the Revenue Recovery Act. He had filed W.P© No.11073/2013 challenging those proceedings and I have disposed of that Writ Petition today, directing the Land Revenue Commissioner to pass orders in that revision petition. The interim order, which was in force in that Writ Petition, directing the revenue authorities not to assign the land continues till the

disposal of the revision petition. He also seeks reliefs as in the case of W.P.(C) No.32172 of 2013.

10. The Commercial Tax Officer has filed a counter affidavit in W.P.(C) No.30866 of 2013, stating that the benefit of Amnesty Scheme is not available in cases where the revenue recovery proceedings are already completed; original assessment in the case of the petitioner was completed under section 17(3) of KGST Act on 13.12.1997 and since the petitioner did not remit the amount due, ie. Rs.76,615/-, proceedings were initiated under the Revenue Recovery Act. Similarly for the year 1993-94 also, revenue recovery certificate was issued for a sum of Rs.86,927/-, on 6.1.1999; fresh assessment was completed for the year 1992-93 on 17.3.1999 and notice was issued to the petitioner on 1.3.2000 directing him to pay the balance amount and since he did not respond, revenue recovery certificate was issued on 18.11.2004. According to the Commercial Tax Officer, the following amounts were due from him:

Year	ST	Surcharge	Interest	Total
1992-93	7901.00	395.00	17224.00	25520.00
1993-94	848.00	3934.00	5972.00	10754.00
Total	8749.00	4329.00	23196.00	36274.00

11. The contention raised by the petitioners in both the cases is that under Section 23B of the KGST Act, the benefit of the Amnesty Scheme can be availed by any defaulter at any stage and it is not limited to cases where revenue recovery proceedings have not reached the stage of sale. On the other hand, it is the contention of the learned Government Pleader that the benefit of the Scheme can be availed only in cases where revenue recovery proceedings have not been finalised, as in the case of the petitioners.

12. Therefore it is necessary to examine Section 23B of the KGST Act, which reads as follows:

23 B. Reduction of arrears in certain cases.-

Notwithstanding anything contained in this Act, or in any Judgment, decree or order of any court, tribunal or appellate authority, an assessee who is in arrears of tax or any other amount due under this Act of the Central Sales Tax Act, 19 (Central Act 74 of 19) relating to the period ending on 31st March, 2005, may opt for settling the arrears by availing reduction at the following rates.

a) in the case of demands relating to the periods up to and including 31st March, 1991, a reduction of twenty five percent for the tax amount, and complete reduction of the interest on the tax amount and for the amount of penalty interest thereon;

b) in the case of demands relating to the period from 1st April, 1991 to 31st March, 1996, a complete reduction of the interest on the tax amount and for the amount of penalty and interest

thereon;

c) in the case of demands relating to the period from 1st April, 1996 to 31st March 2000, a reduction of ninety five percent of the interest on the tax amount, and for the amount of penalty and interest thereon.

d) in the case of demands relating to the period from 1st April, 2000 to 31st March 2005, a reduction of ninety five percent of the interest on the tax amount, and for the amount of penalty and interest thereon; and

e) in case where principal amount has already been remitted prior to coming into force of section 55 C of the Act, reduction of ninety percent of the interest amount.

2. Notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968, reduction of arrears under subsection (1) shall be applicable to those cases in which revenue recovery proceedings have been initiated and the assessing authorities shall have the power to collect such amounts on settlement under subsection (1) and where the amount is settled under subsection (1) the assessing authorities shall withdraw the revenue recovery proceedings against such dealers which will then be binding on the revenue authorities and such dealers shall not be liable for payment of any collection charges.

3. A dealer who wishes to opt for payment of arrears under sub-section (1) shall make an application to the assessing authority in the prescribed form before 31st December, 2013, or on such date as may be notified by the Government.

4. On receipt of an application under sub-section (3), the assessing authority shall verify the same and intimate the amount due to the assessee and thereupon the assessee shall remit the amount in lump sum or in three equal instalments on or before 31st December 2013.

5. If the dealer commits any default in payment of the instalments, the reduction granted under sub-

section (1) is liable to be revoked.

6. No action under sub-section (5) shall be taken without giving notice to the dealer.

7. Notwithstanding anything contained in any order, decree or judgment of any court, tribunal or appellate authority, if an assessee opts to settle his arrears as per this section,-

i) he shall withdraw all cases pending before any court,tribunal or appellate authority relating to the arrears under option; and

ii) if an order, decree or judgment is passed by any

court, tribunal or appellate authority relating to the arrears already settled under option, giving reduction in liability with regard to such arrears, no refund shall be allowed with respect to such arrears covered under such order, decree or judgment; and

iii) no appeal shall lie in any court, tribunal or appellate authority, with respect to the amount settled under this section.

13. As per sub section 2, it is made clear that the reduction of arrears under subsection 1 is applicable to those cases in which the revenue recovery proceedings have been initiated. It also empowers the assessing authorities to collect such amounts on settlement under subsection (1). It further provides that when the amount is settled under subsection (1), the assessing authorities shall withdraw the revenue recovery

proceedings against such dealers and such dealers shall not be liable for payment of any collection charges. Under subsection 3, the defaulters are allowed time to make application in the prescribed form.

14. According to the learned counsel for the petitioner, the words occurring in subsection 2 “shall be applicable to those cases in which revenue recovery proceedings have been initiated” mean, all the cases where revenue recovery proceedings are initiated. It does not specify the stage of the proceedings, upto which the benefit can be granted. Since it does not provide for the particular stage of the proceedings after initiation and does not prohibit its application in a case where the proceedings have been finalised, there is no justification in denying the benefit under Section 23(2) of the Act.

15. On the other hand, it is the contention of the learned Government Pleader that the benefit is available only when the revenue recovery proceedings ‘have been initiated’ and those proceedings should be at a stage when it is possible for the assessing authority to withdraw the same, if the arrears are settled. According to him, the revenue recovery proceedings should not have been finalized. In the case of the petitioners

herein, since the confirmation of sale was over as early as in the year 2000 and 2001 respectively, it was found that the benefit of the scheme could not be availed.

16. The learned counsel for the petitioner relied on the judgments of this Court in W.P.(C) No.5447 of 2014 dated 11.3.2014, W.P.(C) No.15 of 2011 dated 20.1.2011 and W.P.(C) No.11736 of 2006 dated 11.7.2014, wherein, even after the property was sold, this Court permitted the petitioner to avail the benefit of the Scheme and directed the Commercial tax Officer to grant the benefit.

17. At the same time, the learned Government Pleader relied on the judgment of this Court in **Ashok Kumar Vs. State of Kerala** : 2012 (2) KLT 164. It was a case where the petitioner's father was a dealer and the property was bought in sale by the Government in revenue recovery proceedings. The sale was confirmed in that case on 2.2.2006. In the meanwhile, on the basis of appeals filed against the assessment orders, modified orders were issued reducing the liability to pay tax considerably. Consequent to this, the petitioner therein submitted application for settling the liability under the Amnesty Scheme. Initially his request was allowed, permitting to pay the

amount in monthly instalments. Thereafter, he approached the revenue authorities against the sale of the property and requested for re conveyance of the land. Relying on the judgment in **State of Kerala and Ors. Vs. George Jacob** : 2010 (3) KLT 483, this Court held that settling the liability under the Amnesty Scheme does not entitle the defaulter for re-conveyance of the bought in land. However, it is seen that the petitioner therein was permitted to settle the arrears under the Amnesty Scheme after the sale was over.

18. The judgment in W.P.(C) No.5447 of 2014, relied on by the learned Counsel for the petitioner, was in a case where the benefit of Amnesty Scheme was denied on the basis of a circular issued by the Finance Department to the effect that the assessing authority shall ascertain from the revenue recovery authorities as to the details of attachment of assets, if any made in pursuance of such requisition and value thereof as disclosed in the attachment mahazar/sale notice and that settlement amount shall not be less than the value of such assets. This Court, after referring to the amended provision of Section 23B, found that the said circular became redundant and the petitioner therein was found entitled to the benefit of the Amnesty Scheme.

Judgment dated 01.07.2014 in W.P(C) No.11736/2010 and judgment dated 20.01.2011 in W.P.(C) No.15 of 2011, were in cases where the benefit of the Amnesty Scheme was denied on the ground that, the revenue recovery proceedings were already finalised and the property was already purchased by the State under Section 50 of the Revenue Recovery Act as bought in land. This Court held that Section 23B does not prohibit benefit of the scheme in cases where the Government purchased the land or on confirmation of sale.

19. According to the learned Government Pleader, as at present, the petitioner cannot be said to be in arrears, in so far as there is no demand notice pending against him and therefore, Section 23B cannot be applied. As against the arrears of sales tax which was due from him, revenue recovery proceedings were already initiated, which resulted in sale of the properties and purchase of the same by the Government as bought in land. As no other notice or proceedings are issued to the petitioner thereafter directing payment, it is not a case where Section 23B can be applied and therefore, it is not open for the petitioner to seek the benefit of the Amnesty Scheme.

20. But the respondents cannot have a case that the

revenue recovery proceedings they resorted to, were not for realisation of arrears of sales tax. They do not also undertake that they will not initiate further proceedings for realisation of the balance amount in cases where the sale proceeds are insufficient. In this case, since the property was purchased by the Government itself and the respondents could not generate any funds out of the sale proceeds, there is every chance of initiating further proceedings for realisation of the same at some point of time. Whatever it may be, when the defaulter assessee or his legal heirs are prepared to settle the matter, I do not find any reason for such technical objections, as the Government will get immediate payment without undertaking the cumbersome procedures for realisation of dues any further. According to me, such objections are contrary to the intent and object behind the introduction of Section 23 B. The objection raised in the case of the legal heir who approached the respondents also, appears to be hypertechnical. When the said legal heir is requesting for a settlement alone, it is quite unnecessary for the respondents to insist the presence or representation of all the legal heirs for the purpose of settling the arrears, which will only cause unnecessary delay in realisation of funds.

21. In this background, going by the provisions contained in Section 23B of the K.G.S.T Act, I do not find any embargo on the Assessing Officers in granting the benefit of the scheme to the petitioners, who are defaulters/legal heir of the defaulter, especially in a case where the Government themselves had to purchase the land in the revenue recovery proceedings. This Court has already held in the judgment in W.P© Nos.11736 of 2010, 5447/2014 and 15/2011 that, the benefit of the Amnesty Scheme can be granted in such cases where the revenue recovery proceedings have already been proceeded against the defaulter and the property is already purchased by the Government as bought in land. Moreover, sub section 2 of Section 23 B empowers the assessing authorities to settle the amounts towards arrears even in cases where revenue recovery proceedings are initiated. It only provides that on such settlement, they shall withdraw the revenue recovery proceedings. As pointed out by the learned counsel for the petitioner, there is no express prohibition in granting the benefit of this provision to cases where revenue recovery proceedings have already been finalised or to cases where the Government had purchased the property as bought in land. I find force in the

contention of the learned counsel for the petitioner that the legislature would have incorporated suitable provisions in sub section 2 in case the benefit was to be restricted to cases in which the revenue recovery proceedings were pending and not culminated in sale. Moreover, these are cases where the Government has not appropriated the property and the Government is yet to realise the arrears due from the defaulter. Respondents do not have a case that they will never proceed against the defaulter/his legal heirs for realisation of the arrears due, since they could not realise any amount from out of the sale. Therefore, even though the request for availing the benefit of the Amnesty Scheme is made long after the confirmation of sale, and even though the petitioner before this Court is only one among the the legal heirs, there cannot be any objection to grant him an opportunity to avail the benefit of the Scheme, because the Government will be able to realise the amount due from the defaulter/deceased defaulter at least at this stage, when they were unable to realise any part of the arrears due either by way of sale or by any activities in the bought in land which they left idle for a period of more than 8 years, after its purchase. The purpose behind Section 23B of the KGST Act can only be to

expedite realisation of arrears of the sales tax, even on granting certain concessions. The Government will not be able to achieve the said purpose by refusing to invoke the provision in cases like that of the petitioners. Equity demands that the petitioners in these cases are permitted to avail the benefit of the scheme.

22. In the above circumstances, these writ petitions are disposed of with the following directions:

(i) The Commercial Tax Officer-the 2nd respondent in W.P.(C) No.32172 of 2013, shall consider Ext.P10 application submitted by the petitioner for the benefit under the Amnesty Scheme under Section 23B of KGST Act, 1963 and to pass appropriate orders in accordance with law in the light of the aforesaid observations;

(ii) Ext P18 in W.P.(C) No.30866 of 2013 is quashed;

(iii) The Commercial Tax Officer, i.e the third respondent in W.P.(C) No.30866 of 2013, shall re-consider the application Ext.P17 of the petitioner for the benefit under the Amnesty Scheme under Section 23B of KGST Act, 1963 and to pass appropriate orders in accordance with law in the light of the aforesaid observations;

W.P.(C) Nos.32172 & 30866 of 2013 20

(iv) the orders in both the cases shall be passed within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

P.V.ASHA
Judge

rtr/

/true copy/

P.S to Judge