IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 35351 of 2014 (T)

PETITIONER(S):

P. SUJATHA,
RUBY BAR, HOTEL BLUE DIAMOND,
MARKET ROAD,
ERNAKULAM, KOCHI 682 011.

BY ADVS.SRI.VIJAYAN. K.U.
SRI.K.V.VIMAL.

RESPONDENT(S):

1. ASSISTANT COMMISSIONER (ASSMT),
SPECIAL CIRCLE-II, COMMERCIAL TAXES,
ERNAKULAM, PIN - 682 015.

2. INSPECTING ASSISTANT COMMISSIONER,
ERNAKULAM AT KAKKANAD,
COMMERCIAL TAXES, KAKKANAD,
PIN - 682 030.

3. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/02/2015, THE COURT ON 02/03/2015 DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1	**TRUE COPY OF THE FINAL ASSESSMENT ORDER ALONG WITH DEMAND NOTICE FOR THE YEAR 2009-10.**
EXHIBIT P2	**TRUE COPY OF FORM 22 ALONG WITH DEMAND NOTICES FOR THE YEAR 2010-11.**
EXHIBIT P3	**TRUE COPY OF FORM 22 ALONG WITH DEMAND NOTICES FOR THE YEAR 2011-12.**
EXHIBIT P4	**TRUE COPY OF FORM 22 ALONG WITH DEMAND NOTICES FOR THE YEAR 2012-13.**
EXHIBIT P5,P6 & P7	**TRUE COPIES OF NOTICES DATED 06-05-2014 PROPOSING REVISED COMPOUNDED LIBILITY FOR THE YEAR 2010-11, 2011-12 & 2012-13 RESPECTIVELY.**
EXHIBIT P8,P9 & P10	**TRUE COPIES OF REPLIES DATED 16-05-2014 FOR THE YEARS 2010-11, 2011-12 & 2012-13 SUBMITTED BY THE PETITIONER, RESPECTIVELY.**
EXHIBIT P11,P12 & P13	**TRUE COPIES OF ORDERS DATED 31-07-2014 REVISING COMPOUNDED LIABILITY FOR THE YEARS 2010-11, 2011-12 & 2012-13 RESPECTIVELY, ISSUED BY THE FIRST RESPONDENT.**
EXHIBIT P14	**STATEMENT OF TURNOVER REPORTED, TURNOVER AS PER ACCOUNTS, LIABILITY TO TOT THEREOF ON HIGHER FIGURE, TOT PAID AND TOT NOW DEMANDED FOR THE YEARS 2010-11, 2011-12 & 2012-13 IN RESPECT OF THE REVIEW PETITIONER.**

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.35351 of 2014

....

Dated this the 2nd day of March, 2015

J U D G M E N T

The petitioner, who is running a bar attached hotel, and is an assessee on the rolls of the 1st respondent, is aggrieved by Exts. P11, P12 and P13 orders that were passed by the first respondent, revising the tax that he was required to pay for the assessment years 2010-11, 2011-12 and 2012-13 respectively, on compounding basis. The crux of the contentions of the petitioner in the writ petition is that, insofar as the assessments for the said years were completed on the basis of the option exercised by the petitioner for paying tax at compounded rates in terms of S. 7 of the KGST Act, it was not open to the first respondent to re-open the said assessments. He would place reliance on the judgment of this Court in **Sicillia Hotel Pvt Limited v. Commercial Tax Officer and Another (2014 (4) KLT 831)** in support of his contentions.

2. I have heard Sri. K.U.Vijayan, the learned counsel for the petitioner and Sri. Sudheesh Kumar, the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the petitioner had opted to pay tax at compounded rates, in accordance with the scheme of compounding envisaged under S. 7 of the KGST Act, as it stood during the relevant time. It is not in dispute that, as per the said provision, the petitioner was required to discharge his tax liability for the year by computing, on the one hand, 140% of the purchase value of liquor for the year in question, and on the other, 115% of the highest turnover tax payable by it as conceded in the return or accounts, or the turnover tax paid, for any of the previous consecutive three years, and then adopting the higher of the two figures as the turnover for the purposes of discharging his tax liability for the year under consideration. In the case of the petitioner, he had been opting for payment of tax, at compounded rates, from the assessment year 2009-10 itself. In connection with an offence case that was registered against him for the assessment year 2009-10, and the consequent initiation of penalty proceedings, the petitioner had chosen to compound the proceedings departmentally, by admitting the offence and paying the compounding fee. The said admission of the offence by the petitioner, however, effectively translated into an admission, by the petitioner, that the figure representing turnover tax payable by him

for the assessment year 2009-10, as conceded by him in his accounts, was wrong. This, in turn, provided the department with a reason to revise the assessment already completed for the assessment years 2010-11, 2011-12 and 2012-2013, in all of which the turnover tax figures declared by the petitioner, in his accounts for the year 2009-10, was taken as a basis for arriving at the tax payable by the petitioner. In as much as the revision, of the orders permitting compounding, was necessitated in order to correct a mistake that had arisen in the correct computation of the tax payable by the petitioner under S.7 of the KGST Act, and the said mistaken computation was consequent to a wrong declaration of turnover tax figures by the petitioner, I do not find any reason to interfere with Exts. P11, P12 and P13 orders that are impugned in the present writ petition.

Counsel for the petitioner would, no doubt, rely on the decision of this Court in **Sicillia Hotel's case (Supra)**, to contend that assessment completed on compounded basis, cannot be subsequently re-opened. I am of the view, however, that the said decision has no application to the facts of the instant case, where the revised assessments were necessitated on account of a mistaken declaration in the figures shown in the petitioner's accounts for the year 2009-10, which fact was admitted by the petitioner as well.

Resultantly, the writ petition in its challenge against Exts.P11, P12 and P13 orders fails and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns