IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

THURSDAY, THE 22ND DAY OF OCTOBER 2020 / 30TH ASWINA, 1942

WP(C).No.19435 OF 2020(D)

PETITIONER:

M/S. VIZAG EXPORTS
MANGAD, KOLLAM, REPRESENTED BY ITS MANAGING PARTNER,ABHAYA MENON.

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

RESPONDENTS:

1 **THE ASST. COMMISSIONER (ASSMNT),**
SPECIAL CIRCLE, STSAE GOODS AND SERVICE TAX DEPARTMENT, KOLLAM-691002.

2 **THE DEPUTY COMMISSIONER(ASSESSMENT),**
SPECIAL CIRCLE, KOLLAM-691002.

SR GP SRI C K GOVIND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22.10.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 22nd day of October 2020

Petitioner, a private limited Company dealing with the business of raw cashew nuts/kernels, approached this Court laying challenge to the assessment order dated 14.08.2020 (Ext.P5) passed under Sections 25(1) and 42 of the Kerala Value Added Tax Act, 2003.

2. The learned counsel appearing on behalf of the petitioner submits that the notice for taking action under Section 25(1) dealing with the escape assessment was issued on 08.06.2020 as evident from Ext.P3. The relevant assessment year in the present case is 2014-15 and the limitation of five year had already elapsed as the notice could have been issued before 31.03.2020. The amendment caused by the Kerala Finance Act, 2017 to sub-section (3) of Section 25 of 2003 Act extending the period of limitation from five years to six years has already been upheld in the judgment of Division Bench of this Court in ***Biju.A.A and Others v. State Tax Officer*** [2020 (1) KHC, 39].

3. Per contra, Sri.C.K.Govindan, learned Government Pleader submits that the case of the petitioner is not covered by the dictum laid down in the judgment cited on behalf of the counsel as the amenity and right are said to have accrued at the time when the notification for extending the period of limitation from five year to six year promulgated, even under the unamended provision action qua escape assessment notice could have been initiated up to 31.03.2020 and urges this Court for dismissal of this writ petition.

3. In rebuttal learned counsel for the petitioner submits that as far as the comprehensive notice calling upon the petitioner to produce the books of account under the amended provisions of sub-section (3) of Section 42 of the KVAT Act, there is a clerical error which do not commensurate with the statement of accounts. It is in this background the provisions of Article 226 of the Constitution of India has been invoked and there is a request for correction of audited statement as reflected in Exts.P4 and P4(a) which are pending adjudication before the 1st respondent.

4. I have heard the learned counsel for the parties and appraised the paper book. I am of the view there is no force and merit in the submission for causing interference under Article 226 of the Constitution of India for bringing the case in the realm of judicial review. An efficacious remedy by way of filing a statutory appeal is available, but as per the comprehension of the petitioner it has been attempted to bring the matter within the dictum/ratio decidendi culled out in ***Biju A.A*** (supra). It is a matter of record that as and when under provisions of Section 20 assessment returns are filed under the erstwhile KVAT Act, 2003, authorities are within the power to initiate the action of self assessment under Section 25 of the Act prescribing the limitation of five year. The aforementioned period was extended to six years by causing an amendment in sub-section (3) of Section 25 of the Act to be effective and prospective with effect from 31.03.2017. However, in the meantime, notices of such nature were issued and the matter reached this Court in the judgment cited supra and it was held that amendment caused in sub-section (3) of Section 5 would be prospective ie., with effect from 31.03.2017. Needless to

say, it has been held that if a right already accrued or amenity has been achieved by the assessee, in such circumstances, the extended period of limitation cannot be upheld. In the instant case, the period of five years ie., by not taking into consideration the amended provisions for initiation of the proceedings of escape assessment, had elapsed on 31.03.2020. By that time no right or immunity had accrued in favour of the petitioner. Thus the argument of Ms.Krishna K that it would apply prospectively is not acceptable and hereby rejected. No such right had accrued up to 31.03.2020.

5. As regards the other contention seeking correction of the books of accounts or the particulars reflected in the representation Exts.P4 and P4(a) after the issuance of assessment notice and before culmination of assessment proceedings, I am of the view that the appropriate direction as issued in Ext.P6 judgment of Single Bench of this Court cannot be issued owing to the fact that this Court is not accepting request of the petitioner for causing interference under Article 226 of the Constitution of India. If the petitioner is so advised

can take up such plea in the contemplated appeal against the assessment order. In case such appeal is filed, the period spent before this Court in this writ petition is ordered to be excluded.

This writ petition stands dismissed.

Sd/-

AMIT RAWAL

JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	COPY OF RETURN FILED BY THE PETITIONER FOR THE YEAR 2014-15
EXHIBIT P2	COPY OF AUDIT REPORT IN FORM NO.13 AND AUDITED STATEMENT IN FORM NO.13A OF THE PETITIONER FOR THE YEAR 2014-15
EXHIBIT P3	COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2014-15
EXHIBIT P4	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
EXHIBIT P4(A)	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
EXHIBIT P5	COPY OF ORDER ISSUED BY THE 1ST RESPONDENT
EXHIBIT P6	COPY OF JUDGMENT IN WP(C)NO.19660/2015 OF THIS HON'BLE COURT.

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P.A TO JUDGE