IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 21ST DAY OF JULY 2023 / 30TH ASHADHA, 1945

WP(C) NO. 12249 OF 2015

PETITIONER:

HASHIMSHA
AGED 33 YEARS
S/O.LATE V.P.HASSAN, VADAKKEKUDY HOUSE,
VALLAMKARA, CHELAMMATTOM-683 043.

BY ADVS.
SRI.K.M.FIROZ
SRI.S.KANNAN
SMT.M.SHAJNA

RESPONDENTS:

1 THE COMMERCIAL TAX OFFICER
1ST CIRCLE, PERUMBAVOOR-683 542.

2 THE INSPECTING ASSESSMENT COMMISSIONER
COMMERCIAL TAXES, MUVATTUPUZHA-683 572.

ADV.SMT.REKHA C.NAIR – SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Exts.P1 to P3 orders are under challenge in this writ petition. The petitioner has filed this writ petition, with the following prayers;

> "a) to call for the records leading to Exhibits-P1 to P3 and set aside the same by issuing a writ of certiorari any other appropriate writ, direction or order;
>
> b) to grant such other reliefs as this Hon'ble Court may deem fit in the circumstances of the case."

2. The case of the petitioner is as follows:

The petitioner is the son of late V.P.Hassan, who was a registered dealer on the rolls of the 1^{st} respondent. His father expired on 12.09.2013. On 20.10.2014 the petitioner has received three notices for the assessment years 2006-07, 2007-08 and 2008-09 proposing to assess the petitioner and other legal heirs for the reasons mentioned in the notices under Section 25(1) of the Kerala Value Added Tax Act (for short, "the Act"). Detailed objection was filed stating that the notices under Section 25(1) of the KVAT Act are barred by limitation.

3. Though the specific contentions regarding the time bar and the objections regarding conduct of the business by

the petitioner's father were raised, without considering the same, Exts.P1 to P3 were passed. Aggrieved by this, the petitioner has approached by this Court with the above writ petition.

4. Heard the learned counsel for the petitioner as well as the learned Government Pleader.

5. On a perusal of Exts.P1 to P3 orders, it is seen that the assessment years are 2006-07, 2007-08 and 2008-09 respectively, in respect of which, notices under Section 25(1) of the KVAT were issued on 20.10.2014, and in Exts.P1 to P3 orders, it is stated that another notice was issued to during the month of September 2014. Though that notice is taken as the first notice issued for assessment under Section 25(1) of the KVAT Act, it is issued after the five years period of limitation, i.e., after five years from the last date of the period, to which the returns relate, as stated in Section 25(1) of the Act. The five years period is over, for 2006-07 on 31.03.2012, for 2007-08 on 31.03.2013 and for 2008-09 on 31.03.2014.

6. In **Commercial Tax Officer, Anchal and others** v. **S.Najeem and another** [2018(4)KHC 666(DB)], a Division Bench of this Court has held that the period of limitation to determine tax payable is five years as per Section 25(1) of the

Act. In the case in hand, notices under Section 25(1) of the Act were issued on 20.10.2014, i.e., after five years from the last date of the year, to which the return relates, i.e., after five years from 31.03.2007, 31.03.2008 and 31.03.2009, which is perfectly out of time.

7. At this juncture, the learned Government Pleader submits that the State has filed Civil Appeal No.4307 of 2022 before the apex court, challenging the judgment in **S.Najeem** *(supra),* which is still pending. On a consideration of the facts and circumstances, I am of the opinion that following the judgment in **S.Najeem** *(supra),* the writ petition can be allowed, but, subject to the outcome of Civil Appeal No.4307 of 2022.

Accordingly, following the judgment in **S.Najeem** *(supra),* the writ petition is allowed and Exts.P1 to P3 orders are set aside, however, subject to the outcome of Civil Appeal No.4307 of 2022.

Sd/-
SHOBA ANNAMMA EAPEN
JUDGE

SMF

APPENDIX OF WP(C) 12249/2015

PETITIONER'S EXHIBITS

EXHIBIT P1.	TRUE COPY OF THE ASSESSMENT ORDER DATED 30.12.2014 FOR THE ASSESSMENT YEAR 2006-07 PASSED BY TEH 1ST RESPONDENT.
EXHIBIT P2.	TRUE COPY OF THE ASSESSMENT ORDER DATED 30.12.2014 FOR THE ASSESSMENT YEAR 2007-08 PASSED BY THE 1ST RESPONDENT.
EXHIBIT P3.	TRUE COPY OF THE ASSESSMENT ORDER DATED 30.12.2014 FOR THE ASSESSMENT YEAR 2008-09 PASSED BY THE 1ST RESPONDENT.