IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 29TH DAY OF JULY 2024 / 7TH SRAVANA, 1946

WP(C) NO. 14047 OF 2016

PETITIONER:

PRADEEP KUMAR V.S
VENNARATHIL HOUSE,
HOUSING BOARD BUILDING NO.70; KSRTC ROAD,
CHALAKUDY, PIN: 680 307,
THRISSUR DISTRICT, KERALA.

BY ADV SRI.K.S.HARIHARAN NAIR

RESPONDENT:

COMMERCIAL TAX OFFICER
CHALAKUDY, THRISSUR DISTRICT, PIN: 680 307.

BY SPL. GP- SRI. SYED THANGAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner was a registered dealer under the provisions of the Kerala Value Added Tax Act, 2003. Later, subsequently, the registration has been cancelled. According to the petitioner, he had stopped the business. Accordingly, an intimation has been given to the department by the petitioner regarding the intention to stop the business and register the cancellation. Later, the petitioner was served with two notices for reassessment for the Value Added Tax for the year 2009-10 and 2011-12. These notices are produced as Ext.P3 and Ext.P3(a). Admittedly, these notices were under Section 25(1) of the Kerala Value Added Tax Act, 2003 (hereinafter referred to as the Act). The petitioner filed his objection stating that the proposal for assessment are time barred since the notices were issued beyond the period of limitation prescribed under

Section 25(1) of the Act, which is five years. Not withstanding these objections, the respondent proceeded to pass assessment orders as Ext.P7 and Ext.P7(a). The same are under challenge on the ground that these assessments are time barred and also in violation of principles of natural justice.

2. I have heard Sri.K.S.Hariharan Nair, the learned counsel appearing for the petitioner and Sri. Syed Thangal, learned Special Government Pleader (Taxes).

3. The learned counsel for the petitioner submitted that Ext.P3 notice is for the assessment years 2009-10, whereas Ext.P3(a) is for the year 2011-12. Ext.P7 order of assessment is for the year 2009-2010, whereas Ext.P7 (a) is for the year 2011-12. It is also pointed out that insofar as the proceedings taken by the respondent are concerned, in addition to the ground of limitation, the same is also liable to be set aside on the

ground of violation of principles of natural justice.

4. The learned counsel specifically pointed out that in its objection, the petitioner had raised various objections and sought permission to cross examine, with reference to the specific documents, which according to the learned counsel for the petitioner was not afforded by the assessing authority. Hence, according to the learned counsel Ext.P7 and Ext.P7(a) orders are liable to be set aside.

5. On a contrary, the learned Special Government Pleader (Taxes) appearing for the respondent pointed out with reference to the pleadings in the counter affidavit that the petitioner had effected interstate sales after reporting the stoppage of his business and this is the reason why proceedings for reassessment were initiated by the authority.

6. I have considered the rival submissions raised across the Bar .

7. Insofar as the assessment year 2009-10 is concerned, a perusal of Ext.P3 notice shows that the same was issued on 05.03.2016, which admittedly is time barred. Section 25(1) of the Kerala Value Added Tax Act, 2003 reads as follows:-

" ***25. Assessment of escaped turnover:***

1) Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or return period or has been under- assessed or has been assessed at a rate lower than the rate at which it is assessable or any deduction has been wrongly made there from, or where any input tax or special rebate credit has been wrongly availed of, the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgement, the turnover which has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction in *respect of which has been wrongly made or input tax or special rebate credit that has been wrongly availed of and assess the tax payable on such turnover or disallow the input tax or special rebate credit wrongly availed of, after issuing a notice on the dealer and after making such enquiry as it may consider necessary:*

Provided that before making an assessment under this sub- section the dealer shall be given a reasonable opportunity of being heard.

Provided further that where the escapement is due to the application of incorrect rate of tax, no assessment under this sub- section shall be made where the dealer files revised return and pays the tax which has escaped assessment along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee.

Provided also that the time limit for the completion of assessments for the year 2005-06 under this section shall be extended upto 31 march, 2011"

The reading of the aforesaid Act shows that a period of five years is prescribed for initiating the proceeding under 25(1) of the Act. Therefore, admittedly, Ext.P3 notice is clearly barred by limitation. Accordingly. Ext.P7 assessment order also cannot be sustained and hence liable to be set aside.

8. Insofar as the proceedings for the assessment year 2011-10 are concerned, Ext.P3(a) is the notice issued on 05.03.2016, which is admittedly within the period of limitation. However, the learned counsel for the petitioner pointed out that in terms of the amendment caused to the Kerala Value Added Tax Act, 2003 by introduction of Section 25AA with effect from 19.07.2019, if the assessing authority finds there has happened a suppression of the turn over pursuant to the order of penalty imposed, the assessment shall be completed by addition 50% of the suppressed turn over.

He further relied on the judgment of the Single Judge in **T.C.Jose v. The Commercial Tax Officer,** dated 13.03.2020 in WP(C).No. 33157 of 2016, to contend for the proposition that the amendment caused to the provisions of the Kerala Value Added Tax Act, 2003 by the introduction of Section 25AA of the Act is certainly having retrospective operation. Therefore, it is pointed out that if Ext.P7(a) assessment orders are allowed to stand, certainly the petitioner would be put to prejudice

9. In the considered view of this Court, though Ext.P3 notice and Ext.P7 order of assessment insofar as it relates to 2009-10 is concerned are liable to be set aside, that cannot said so in respect of Ext.P3(a) notice. Though Ext.P3(a) is issued within the period of limitation under Section 25(1) of the Act, certainly the petitioner is entitled for the benefit of the amendment introduced with effect from 19.07.2019. Coupled with the fact that an opportunity of hearing as well as the cross

examination as sought by the petitioner not being granted, certainly the principle of natural justice stood violated. Hence, Ext.P7(a) order of assessment is also thus liable to be quashed.

In the result, this Writ petition is allowed in part and directions are issued as follows:-

i Ext.P3 notice and Ext.P7 order assessment will stand set aside

ii Ext.P3(a) notice is affirmed. However, Ext.P7(a) order of assessment for the year 2011-12 cannot be sustained for violation of principles of natural justice.

iii The respondent is directed to reconsider the matter afresh by affording an opportunity of hearing for the petitioner and enabling him to produce such other evidence as is required. It is made clear that the burden of establishing that the petitioner has not effected the interstate sales as mentioned in paragraph 6 of the counter affidavit will solely on the shoulders of the petitioner. While reconsidering the assessment for the year 2011-12, the petitioner is also free to press his case based on the amendment brought in to the Kerala Value Added Tax Act, 2003 by introduction of Section 25 AA of the Act, which affirmed by this Court in **T.C Jose**'s case (Supra).

iv Needful in this regard shall be done by the 3rd respondent, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

v For enabling the respondent to proceed as directed above, the petitioner is directed to appear before the respondent on 21.08.2024 at 11.00 am. If the petitioner appears, the respondent may proceed in accordance with the directions issued by this Court. If the petitioner fails to appear before the respondent as directed above, the benefit of this judgment will not enure to the petitioner and the respondent can thereafter proceed appropriately for the assessment year 2011-12.

Sd/-
EASWARAN S.
JUDGE

SPV

APPENDIX OF WP(C) 14047/2016

PETITIONER EXHIBITS

EXHIBIT P1	**COPY OF LETTER DATED 15/10/2009 REGARDING STOPPAGE OF BUSINESS**
EXHIBIT P2	**COPY OF REPLY LETTER DATED 24/8/2015 SUBMITTED BY THE PETITIONER AGAINST THE NOTICE OF PRODUCTION OF THE BOOKS OF ACCOUNTS**
EXHIBIT P3	**COPY OF NOTICE DATED 5/3/2016 ISSUED BY THE RESPONDENT FOR THE YEAR 2009-1.**
EXHIBIT P3(A):	**COPY OF NOTICE DATED 5/3/2016 ISSUED BY THE RESPONDENT FOR THE YEAR 2011-12.**
EXHIBIT P4	**COPY OF REPLY SUBMITTED BY THE PETITIONER DATED 19/3/2016 FOR THE YEAR 2009-10.**
EXHIBIT P4(A)	**COPY OF REPLY SUBMITTED BY THE PETITIONER DATED 19/3/2016 FOR THE YEAR 2011-12.**
EXHIBIT P5	**COPY OF NOTICE FOR PERSONAL HEARING DATED 26/6/2016 FOR THE YEAR 2009-10.**
EXHIBIT P5(A)	**COPY OF NOTICE FOR PERSONAL HEARING DATED 26/6/2016 FOR THE YEAR 2011-12**
EXHIBIT P6	**COPY OF ARGUMENT NOTE DATED 29/3/2016 SUBMITTED A THE TIME OF PERSONAL HEARING FOR 2009-10 AND 2011-12**

EXHIBIT P7	**COPY OF ASSESSMENT ORDER DATED 29/3/2016 FOR THE YEAR 2009-10.**
EXHIBIT P7(A):	**COPY OF ASSESSMENT ORDER DATED 29/3/2016 FOR THE YEAR 2011-12**

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE