IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM
TUESDAY, THE 2ND DAY OF APRIL 2024 / 13TH CHAITHRA, 1946
WP(C) NO. 38357 OF 2016

PETITIONER :-

S.POORNACHANDRA RAO
SOLE PROPRIETOR OF 'SRI. POORNA CHANDRA AND CO.'BUILDING NO.63/1736 (OLD NO.38/1060 A), 2ND FLOOR , NEAR CIVIL SUPPLIES CORPORATION OFFICE, GANDHI NAGAR, ERNAKULAM, COCHIN - 682 020, THROUGH HIS POWER OF ATTORNEY HOLDER, B. KOTHANDARAMAN.

BY ADV SRI.R.MURALEEDHARAN

RESPONDENTS :-

1. **THE COMMERCIAL TAX OFFICER**
   KVAT CIRCLE - II, DEPARTMENT OF COMMERCIAL TAXES, TRIPUNITHURA, ERNAKULAM, COCHIN, PIN - 682 302.
2. **STATE OF KERALA**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 002.

SRI. V.K. SHAMSUDHEEN -SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

1. The petitioner claims that he is General Merchant and Commission Agent registered under the Kerala Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956. With respect to the Assessment Year 2009-2010, the petitioner had filed Return conceding a total and taxable turnover of Rs.50,10,10,111.86 and had paid tax for the same. According to the petitioner, there was clerical error in uploading the interstate stock transfer/consignment. Taking undue advantage of the clerical mistake, the Respondent No.1 reopened the assessment and passed Ext.P5 Order under Section 25(1) of the Kerala Value Added Tax Act demanding tax alleging escaped turnover. With respect to the Assessment Year 2010-2011 also, Ext.P6 Order was passed demanding tax, alleging escaped turnover on identical reason. Petitioner challenges Exts.P5 and P6 Orders on the ground that the same are passed after the period of five years limitation prescribed in Section 25(1).

2. No Counter Affidavit is filed by the respondents.

3. I heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents.

4. The learned Government Pleader submitted that the impugned order is appealable under the Statute and prayed for dismissal of the Writ Petition finding alternate remedy. But the Writ Petition has been pending here since the year 2016 with an unconditional stay and the question is only with respect to the limitation, I deem it fit to consider the writ petition on merits.

5. Exts.P1 and P2 are the Notices dated 25/08/2016 under Section 25(1) of the KVAT Act, proposing to reopen the assessment with respect to the Assessment Years 2009-10 and 2010-11. With respect to the Assessment Year 2009-10, the Five year period of limitation expired on 31/03/2015. With respect to the Assessment Year 2010-11, the Five year period of limitation expired on 31/03/2016. In both the Assessment years, Notices under Section 25(1) of the KVAT Act are issued after the period of limitation. Ext.P5 Assessment Order was passed in the proceedings initiated as

per Ext.P1. Ext.P6 Assessment Order was passed in the proceedings initiated as per Ext.P2. Exts.P5 and P6 Orders are issued in time barred proceedings. They are liable to be set aside.

Accordingly, the Writ petition is allowed issuing a Writ of certiorari setting aside Exts.P5 and P6 Orders passed by the Respondent No.1.

Sd/-

M.A.ABDUL HAKHIM

JUDGE

SMA

APPENDIX OF WP(C) 38357/2016

PETITIONER EXHIBITS :-

EXHIBIT P1	TRUE COPY OF THE PRE-ASSESSMENT NOTICE ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2009-2010 DATED 25.10.2016.
EXHIBIT P2	TRUE COPY OF THE PRE-ASSESSMENT NOTICE ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2010-2011 DATED 25.10.2016.
EXHIBIT P3	TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER TO EXT.P-1 NOTICE, DATED 02.11.2016.
EXHIBIT P4	TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER TO EXT.P-2 NOTICE, DATED 02.11.2016.
EXHIBIT P5	TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR THE YEAR 2009-2010 DATED 16.11.2016.
EXHIBIT P6	TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR THE YEAR 2010-2011 DATED 16.11.2016.