IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

WP(C) NO. 36762 OF 2017

PETITIONER/S:

A.M.ABDULLA,
AGED 36 YEARS
A & M EXPORTS, MANATHALA BEACH,CHAVAKKAD,
PIN-680506

BY ADVS.
K.KRISHNA
MEERA V.MENON

RESPONDENT/S:

1 THE COMMERCIAL TAX OFFICER,
CHAVAKKAD, PIN-680506

2 THE DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, THRISSUR,
PIN-680001

SRI.ARUN AJAY SHANKAR, SPL.GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MOHAMMED NIAS C. P. , J.

...

W. P. (C) No. 36762 OF 2017

...

Dated this the 07th day of April, 2025

JUDGMENT

The petitioner is engaged in the trading of arecanut and is an assessee under the KVAT Act 2003 and the CST Act 1956. The assessment under the CST Act for the year 2011-2012 was completed as per Ext.P1, which was challenged before the appellate authority by filing Ext.P2 appeal. Ext.P1 was later cancelled under Section 56 of the KVAT Act by the 2nd respondent without taking note of the appeal filed against Ext P1 assessment order.

2. After re-opening the assessment, Ext.P3 order was passed on 24.03.2017, which was the subject matter of WP(C) No.11914 of 2017 and by the judgment dated 23rd September 2022, it was found that for the assessment year 2011-2012, the notice for escaped assessment was issued only 03.03.2017, that is after the expiry of four years prescribed under Section 6(7) of the CST Rules. On the ground that the said notice ought to have been issued on or before 31.03.2016 and since the same was issued only on 03.03.2017, the notices were set aside as time barred. The point as

to whether *suo moto* proceedings can be initiated under Section 56 of the Act when the order sought to be revised is the subject matter of an appeal before the appellate authority was considered by this Court in **Paul P. Paul V. State of Kerala** [2025 KLT OnLine 1038], wherein it was held, that proceedings initiated under Section 56 cannot be invoked when an appeal was already pending against the order sought to be revised.

3. In view of the above undisputed facts, Ext.P7 order passed under Section 56 of the Act cannot be sustained and the same is accordingly quashed.

The writ petition is allowed as above.

SD/-
MOHAMMED NIAS C.P.,
JUDGE

JJ

APPENDIX OF WP(C) 36762/2017

PETITIONER EXHIBITS

EXHIBIT P1:	COPY OF THE ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2011-12DATED 30.12.2016
EXHIBIT P2:	COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER (APPEALS), THRISSUR DATED 23.2.2017
EXHIBIT P3:	COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DATED 24.0.2017
EXHIBIT P4:	COPY OF THE ORDER IN WPC NO.11914/17 OF THIS HON'BLE COURT
EXHIBIT P5:	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT DATED 22.07.2017
EXHIBIT P6:	COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDNET DATED 12.08.2017
EXHIBIT P7:	COPY OF ORDER ISSUED BY THE 2ND RESPONDNET DATED 25.09.2017
EXHIBIT P8:	COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DATED 3.11.2017