

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 11TH DAY OF JANUARY 2023 / 21ST POUSHA, 1944

WP(C) NO. 816 OF 2023

PETITIONER:

- 1 PAPPACHAN CHAKKIATH
S/O.KOCHAPPU
AGED 68 YEARS
ALPHONSA MEMORIAL PRESS,
XIV/212, 213, 214, VARAPUZHA,
VARAPUZHA P.O.ERNAKULAM DISTRICT,
KERALA, PIN - 683517
BY ADVS.
YASH THOMAS MANNULLY
SOMAN P.PAUL

RESPONDENTS:

- 1 ASSISTANT COMMISSIONER
CTO NORTH PARAVUR,
OFFICE OF THE ASSISTANT COMMISSIONER,
STATE GOODS AND SERVICE TAX DEPARTMENT - KERALA
NORTH PARAVUR, PIN - 683513
- 2 THE JOINT COMMISSIONER OF STATE TAX
SGST DEPARTMENT MATTANCHERRY
KOCHI, PIN - 682002
- 3 THE DEPUTY COMMISSIONER OF STATE TAX
SGST DEPARTMENT MATTANCHERRY
KOCHI, PIN - 682002
ADV. THUSHARA JAMES, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

Dated this the 11th day of January, 2023

The petitioner has approached this Court challenging Ext.P4 order issued by the 1st respondent under Section 73 of the CGST/SGST Acts imposing on the petitioner a total liability of Rs.9,70,596/- towards CGST and SGST payable by the petitioner for the period from July 2017 to March 2018.

2. Learned counsel appearing for the petitioner would submit that the entire proceedings culminating in Ext.P4 order are without jurisdiction and therefore, notwithstanding the availability of any alternate remedy, the petitioner is entitled to challenge Ext.P4 by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. It is submitted that the period for which the liability was imposed on the petitioner is in respect of the financial year 2017-18. It is submitted that under sub-section (10) of

Section 73 of the CGST/SGST Acts, the time limit for completion of proceedings is three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised, relates. It is submitted that by virtue of Ext.P6 notification issued under the provisions of Section 168A of the CGST Act, the time limit for issuance of an order for the financial year 2017-18 has been extended upto 30.09.2023. It is submitted that the terms of Ext.P6 notification relate only to the issuance of order and therefore, unless the show cause notice was issued within the time specified in sub-section (2) of Section 73 read with provisions of sub-section (10) of Section 73, the entire proceedings have to be declared as one without jurisdiction. In other words, it is the contention of the learned counsel appearing for the petitioner that only the time limit for issuance of order has been extended and the time limit for issuance of a show cause notice

has not been extended.

3. The learned Senior Government Pleader appearing for the State contends that when the time limit for issuance of an order under sub-section(10) of Section 73 stands extended, automatically the time limit for issuance of a show cause notice under sub-section(2) of Section 73 also stands extended.

4. Learned counsel appearing for the petitioner, in reply, would contend that a notification under Section 168A can be issued only in extraordinary circumstances and since the notification only extends the time limit for issuance of the order and does not specify that the time limit for issuance of show cause notice has also been extended, it must be held that the time limit for issuance of show cause notice has not been extended. The Hon'ble Supreme Court has in ***Commissioner of Customs (Import), Mumbai v. M/s.Dilip Kumar and Company and others [(2018) IX SCC 1]***, held that when there is

ambiguity in the provisions of a taxing statute, the law must be interpreted in favour of the assessee and against the revenue.

5. I have considered the contentions raised. The contention raised on behalf of the petitioner must necessarily fail on a proper interpretation of Section 73 of the CGST/SGST Acts. Sub-sections (1) and (2) of Section 73 read as under:-

"73. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.”

It is clear from a reading of sub-section(2) of Section 73 that, the show cause notice to be issued under sub-section(1) of Section 73 has to be issued at least three months prior to the time limit specified in sub-section(10) for issuance of order. When the time limit for issuance order under sub-section(10) of Section 73 for the financial year 2017-18 has been extended upto 30.09.2023, the only interpretation that can be placed on the provisions of sub-section(2) of Section 73 is that, the show cause notice can also be issued with reference to the date 30.09.2023 and not with reference to any other date. There is absolutely no ambiguity in the provisions requiring this Court to apply any rule of interpretation in favour of the assessee. In ***Commissioner of Customs (Import), Mumbai*** (supra) it was held as follows:

"25. At the outset, we must clarify the position of "plain meaning rule or clear and unambiguous rule" with respect of tax law. 'The plain meaning rule' suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase 'cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio'."

6. Therefore, I am of the view that the petitioner has not made out any case for interference under Article 226 of the Constitution of India as I cannot find that the impugned orders are issued without jurisdiction. The writ petition fails. It is accordingly dismissed.

Faced with this situation, the learned counsel for the petitioner states that the petitioner's remedy of filing an appeal against Ext.P4 order expires today and considering the fact that the petitioner had approached this Court by filing the above writ

petition, the time for filing the appeal may be extended by a period of two weeks from today. I consider this request reasonable and therefore, it is directed that the petitioner will be permitted to file the appeal against Ext.P4 order within a period of two weeks from today. If such appeal is filed within the aforesaid period of two weeks, the same shall be treated as one filed in time and the appellate authority shall consider the appeal on merits.

Sd/-
GOPINATH P.
JUDGE

SKP/11-01

APPENDIX OF WP(C) 816/2023

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF SHOW CAUSE NOTICE DATED 16-08-2022
EXHIBIT P2 TRUE COPY OF PROCEEDINGS NUMBERED
32ACYPC0739L1ZD/2017-18 DATED 16-08-2022 OF
RESPONDENT NO.1
EXHIBIT P3 TRUE COPY OF REPLY AFFIDAVIT DATED 13-09-2022
FILED BY THE PETITIONER BEFORE RESPONDENT NO.1
EXHIBIT P4 TRUE COPY OF ORDER DATED 11-10-2022 ISSUED BY
RESPONDENT NO.1
EXHIBIT P5 TRUE COPY OF PROCEEDINGS IN ORDER NO.
32ACYPC0739L1ZD/2017-18 DATED 11-10-2022
EXHIBIT P6 TRUE COPY OF NOTIFICATION DATED 05-07-2022
NUMBERED 13/2022 - CENTRAL TAX

RESPONDENTS' EXHIBITS:NIL

TRUE COPY

P.A. TO JUDGE