

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 25TH DAY OF JANUARY 2022 / 5TH MAGHA, 1943

WP (C) NO. 24913 OF 2021

PETITIONER:

M/S.KARVY INNOTECH LTD
(EARLIER KNOWN AS HCL SERVICES LTD),
MIDLAND AREENA, 84B,
MAROTTICHUVAD JN.,
EDAPPALLY, KOCHI,
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE
MR.ABHISHEK VAISHYA

BY ADVS.

SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMT.G.MINI (1748)
SRI.P.S.SREE PRASAD
SRI.JOB ABRAHAM
SRI.AJAY V.ANAND

RESPONDENT:

DEPUTY COMMISSIONER (ASSMT)
SGST DEPARTMENT, SPECIAL CIRCLE-111,
ERNAKULAM-682 015.

DR.THUSHARA JAMES, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 11.01.2022, THE COURT ON 25.01.2022 DELIVERED
THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C) No.24913 of 2021

Dated this the 25th day of January, 2022

JUDGMENT

Petitioner assails an order of assessment issued against it for the assessment year 2016-17 under the Kerala Value Added Tax Act, 2003 (for short, 'KVAT Act'). The grievance of the petitioner arises from the impugned order having allegedly been rendered, without any hearing. Petitioner contended that the impugned order is issued without jurisdiction and in violation of the principles of natural justice, since, an effective opportunity of hearing was not granted to the petitioner apart from failing to consider the reply filed initially to a notice under section 25(1) of the KVAT Act.

2. Petitioner is a public limited company engaged in the business of various IT related services. For the assessment year 2016-17, it had filed its annual return on 31.05.2017. Thereafter, a notice dated 10.04.2018 issued under section 25(1) of the KVAT Act was served on the petitioner, alleging various

irregularities. A reply notice was filed by the petitioner on 08.05.2018. The total escaped turnover proposed by the assessing officer as per notice dated 10.4.2018 was Rs.6,95,10,864/-. Petitioner pleads that subsequent to the reply to the notice dated 10.04.2018, no communication was received thereafter and that they assumed the matter to have been closed. However, Ext.P5 notice dated 05.01.2021 was received by the petitioner for the same assessment year, issued under section 25(1) of the KVAT Act, wherein, the total escaped turnover was proposed to be Rs.29,32,47,628/-.

3. Pursuant to the aforesaid notice, petitioner responded by e-mail dated 25.01.2021, requesting an additional time of two weeks for submitting the information and also sought an opportunity for hearing before any orders are passed. By communication dated 27.01.2021, produced as Ext.P8, the respondent adjourned the proceeding to 02.02.2021 with an assertion that 'no further adjournment will be granted'. Presumably, there was no appearance on 02.02.2021. However, by Ext.P9 dated 03.02.2021, petitioner sought an additional time of one more week, for submitting its response and again sought

an opportunity of hearing. Though the documents produced along with the writ petition do not show any adjournment on 02.02.2021, the communication produced as Ext.P10 reveals that the assessing officer must have granted a further adjournment. Again petitioner requested additional time of two weeks through the latter part of Ext.P10. In the initial part of Ext.P10, there is a communication issued by the respondent on 26.02.2021 adjourning the case to 01.03.2021.

4. Sri.A.Kumar, learned counsel for the petitioner submitted that petitioner is subjected to great prejudice since sufficient opportunity was not granted. It was also argued that the entire affairs of the petitioner, especially those relating to the taxation matters were being handled by the corporate office of the petitioner at Uttar Pradesh and due to the surge in Covid cases, there were difficulties for the petitioner to collate the data for replying to the notices issued by the respondent, which was the reason why the adjournments were sought for. Learned counsel further submitted that no prejudice would be caused to the Revenue if an opportunity is granted afresh.

5. Dr.Thushara James, learned Senior Government Pleader,

on the other hand, submitted that repeated opportunities were granted to the petitioner and their failure to avail those opportunities resulted in the impugned assessment order. It was also argued that, in the circumstances of the case, it cannot be contended that there was violation of the principles of natural justice and hence the normal remedies provided in the statute ought to be pursued by the petitioner.

6. I have considered the rival contentions.

7. An assessment order issued under section 25(1) of the KVAT Act is impugned in this writ petition. The jurisdiction of the High Court to interfere in matters relating to assessment of tax arises only when there is an infringement of fundamental rights or when the taxing authorities have assumed a jurisdiction not vested in it or when there is a violation of the principles of natural justice or when there is a challenge to the vires of the Statute [see **C.A.Abraham v. Income Tax Officer, Kottayam and Anr.** (AIR 1961 SC 609), **N.T.Veluswami Thevar v. G.Raja Nainar and Others** (AIR 1959 SC 422), and **Assistant Commissioner of State Tax and Others v. Commercial Steel Ltd.** (2021) SCC Online SC 884)].

8. A perusal of the notices issued by the respondent as Ext.P2 and Ext.P5 reveals that the latter of the notices dated 05.01.2021 was for a different amount and therefore the petitioner ought to have replied to the specific allegations mentioned in the said notice dated 05.01.2021. Failure to consider the reply dated 08.05.2018, is, therefore, not material, since the officer had, subsequent to the original notice, issued a fresh notice within the period of limitation raising a different set of allegations. Thus, I find that failure to consider Ext.P3 reply given by the petitioner, while issuing Ext.P11 order of assessment, does not vitiate the assessment order.

9. A perusal of Ext.P7, P8, P9 and P10 communications will reveal that petitioner was granted several opportunities to object to the notice dated 05.01.2021 and that every request for adjournment was heeded to by the assessing officer. If the petitioner fails to respond even after four or five adjournments, the assessing officer is left without any remedy other than to issue the assessment order.

10. While considering the question whether the petitioner was deprived of an opportunity of hearing, this Court bears in

mind that, by Ext.P7, petitioner had sought only for two week's time. By Ext.P9 he had only sought for one more week's time and by Ext.P10 he sought for a further two weeks time. Thus practically every request for adjournment was granted with a specific rider that 'no further adjournment will be given'. In spite of the above, further opportunities were granted to the petitioner, but he failed to avail the same. Admittedly, as evident from the impugned assessment order, even on 01.03.2021, petitioner had failed to file any objection and even failed to appear for a hearing. As a result of the failure of the petitioner to appear for the hearings as well as the failure to file any objection, the respondent could not have done anything other than issuing an order of assessment, as proposed in the notice. It is in the above circumstances that Ext.P11 came to be issued.

11. On a consideration of the sequence of events that culminated in Ext.P11 assessment order, I am of the considered view that petitioner was granted sufficient opportunity to contest the assessment proceedings and his failure to do so cannot be regarded as a violation of the principles of natural justice to invoke the discretionary jurisdiction of this Court under Article

226 of the Constitution.

Hence, the writ petition stands dismissed. However, the liberty of the petitioner to pursue his statutory remedies shall not be affected by this judgment and if any such remedy is invoked, the same shall be considered in accordance with law.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX OF WP(C) 24913/2021

PETITIONER'S/S' EXHIBITS

EXHIBIT P1	A TRUE COPY OF THE ANNUAL RETURN FOR THE ASSESSMENT YEAR 2016-17 DATED 30.5.2017
EXHIBIT P2	A TRUE COPY OF THE NOTICE DATED 10.4.2018
EXHIBIT P3	A TRUE COPY OF THE REPLY DATED 8.5.2018
EXHIBIT P4	A TRUE COPY OF THE LETTER DATED 14.5.2018
EXHIBIT P5	A TRUE COPY OF THE NOTICE DATED 5.1.2021
EXHIBIT P6	A TRUE COPY OF EMAIL DATED 12.1.2021
EXHIBIT P7	A TRUE COPY OF THE COMMUNICATION DATED 25.1.2021
EXHIBIT P8	A TRUE COPY OF THE COMMUNICATION DATED 27.1.2021
EXHIBIT P9	A TRUE COPY OF THE COMMUNICATION DATED 3.2.2021
EXHIBIT P10	A TRUE COPY OF THE COMMUNICATION DATED 26.2.2021
EXHIBIT P11	A TRUE COPY OF THE ASSESSMENT ORDER DATED 3.3.2021
EXHIBIT P12	A TRUE COPY OF THE RECTIFICATION APPLICATION DATED 15.3.2021
EXHIBIT P13	A TRUE COPY OF THE LETTER DATED 8.2.2021
EXHIBIT P14	A TRUE COPY OF THE EMAIL DATED 10.2.2021
EXHIBIT P15	A TRUE COPY OF THE EXTRACTS FROM 8FA REPORT
EXHIBIT P16	A TRUE COPY OF THE LETTER DATED 29.6.2021

EXHIBIT P17 A TRUE COPY OF THE LETTER DATED
13.10.2021

EXHIBIT P18 A TRUE COPY OF THE LETTER SEEKING
WITHDRAWAL OF RECTIFICATION APPLICATION
DATED 3.11.2021

EXHIBIT P19 A TRUE COPY OF THE LETTER SEEKING
WITHDRAWAL OF RECTIFICATION APPLICATION
DATED 3.11.2021

EXHIBIT P20 A TRUE COPY OF THE REVENUE RECOVERY
NOTICE DATED 5.10.2021