

Wrong VAT Rate Can Be Rectified: Kerala High Court

2022 LiveLaw(Ker) 631

IN THE HIGH COURT OF KERALA AT ERNAKULAM

GOPINATH P.; J.

WP(C) NO. 34555 OF 2022; 1 November 2022

M/S. CRESCENT CONSTRUCTIONS versus DEPUTY COMMISSIONER OF STATE TAX (WC)

Petitioner by Advs. Harisankar V. Menon, Meera V. Menon, R. Sreejith, K. Krishna

Respondents: Adv. Thushara James, Sr. Government pleader

J U D G M E N T

The petitioner has approached this Court being aggrieved by the rejection of his application for rectification by Ext.P5 order. It is the case of the petitioner that goods which were taxable at the rate of 5% were imposed with the tax at the rate of 13.5 % by completing the assessment as per Ext.P 3 order, prompting the petitioner to file an application for rectification along with c-forms and invoices which according to the petitioner show that the goods in question could have been taxed only at 5%. Perusal of Ext.P5 suggests that the Officer has rejected the petition for rectification on the ground that the petitioner has produced the documents which showed that the goods were taxable only at the rate of 5%, along with the rectification petition and not at the time of assessment.

2. Heard the learned Senior Government Pleader also.

3. Having regard to the facts and circumstances of the case, I am of the view that the 1st respondent has misdirected himself in law while deciding to reject the application for rectification on the ground that the petitioner produced the documents in support of the claim for lower rate of tax only along with the application for rectification. As is evident from provisions of Section 66 of the KVAT Act, disputes such as these are matters which can be considered in a rectification application and once it is brought to the notice of the Officer that there is a mistake in applying the correct rate of tax, it was within the power conferred on the Officer under Section 66 to rectify such mistake. As already noticed a reading of Ext.P5 suggests that the Officer had rejected the application for rectification only on the ground that the documents in support of a lower rate of tax were produced only along with the application for rectification.

4. Therefore, Ext.P5 is quashed. The rectification application (Ext.P4) filed by the petitioner is restored to the file of the 1st respondent. The 1st respondent shall reconsider the matter and take a decision on the application for rectification in the light of the observations made above. Till a decision is taken on Ext.P4 as above, all further steps for recovery of amounts due under Ext.P3 order shall be kept in abeyance. A fresh decision shall be taken by the 1st respondent within a period of one month from the date of receipt of a copy of this judgment. The petitioner shall mark appearance before the 1st respondent at 11 am on 09.11.2022 either in person or through authorised representative.

The writ petition is disposed of as above.