

**2023 LiveLaw (SC) 774**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**B.V. NAGARATHNA; J., UJJAL BHUYAN; J.**

**SEPTEMBER 1, 2023**

**CIVIL APPEAL NO. /2023 (@ SLP(C) Diary No(s). 8386/2023)**

**P. M. PAUL *versus* THE STATE TAX OFFICER & ORS.**

**Kerala Value Added Tax Act, 2003 - Amnesty Scheme - Since appeal is a statutory remedy, the assessee cannot be barred from seeking restoration of the appeal which was withdrawn by him as a pre-condition for availing the benefit under an Amnesty scheme, if the assessee is subsequently unsuccessful in availing the benefit of the scheme. The appellate authority as well as the Kerala High Court ought to have allowed the assessee to seek restoration of his appeal before the appellate authority so that the same could have been heard on merits. The court thus set aside the order of the High Court where it had upheld the appellant authority's decision rejecting assessee's application for restoration of appeal against the assessment order passed against him.**

(Arising out of impugned final judgment and order dated 18-10-2022 in WA No. 1439/2022 passed by the High Court of Kerala at Ernakulam)

*For Petitioner(s) Mr. Abhilash M.R., Adv. Mr. Alim Anvar, Adv. Mr. Rajkumar, Adv. Mrs. Anu K Joy, Adv. Mr. Mohammed Sadique T.A., AOR*

*For Respondent(s) Mr. C. K. Sasi, AOR Ms. Meena K Poulouse, Adv.*

**ORDER**

Delay condoned.

Leave granted.

The appellant is aggrieved by the judgment of the Division Bench of the Kerala High Court which has affirmed the order of the learned Single Judge, by which, the application filed by the appellant herein, seeking restoration of the statutory appeal before the appellate authority was rejected.

Briefly stated, the facts are that the appellant is a dealer registered under the provisions of the Kerala Value Added Tax Act, 2003 (hereinafter referred to as the "KVAT Act"). The Sales Tax Officer, Chavakkad cancelled the KVAT registration of the appellant herein on the assumption that the appellant had permanently closed his business as no transaction had taken place and his registration of dealership had not been renewed. The appellant assailed the order of the Sales Tax Officer, Chavakkad before the Joint Commissioner (Appeals) in Case No.227/2018. The appellant had also challenged the assessment order imposing tax liability of Rs.8,32,753/- before the Joint Commissioner of Appeals by filing KVATA 174/2019. When the matter was pending before the said appellate authority, the appellant availed of the Amnesty scheme introduced by the Government of Kerala. In order to avail of the said benefit under the Amnesty scheme, the appellant withdrew his appeal KVATA 174/2019 pending before the appellate authority. However, the appellant was not successful in availing the benefit of the Amnesty scheme. In the circumstances, the appellant sought restoration of his appeal against the order of the Sales Tax Officer, Chavakkad dated 22.07.2018, which was pending before the Joint Commissioner of Appeals, Chavakkad. The application for restoration was dismissed by the said appellate authority on the ground that he had not raised any valid ground for seeking restoration of the appeal. Being aggrieved, the appellant preferred W.P. No.23890/2022 before the High Court of Kerala challenging the order dated 21.02.2022 whereby the application for restoration of the appeal was dismissed.

The learned Single Judge of the High Court, however, dismissed the Writ Petition on the ground that the appellant could not seek restoration of the appeal on being unsuccessful in availing the benefit under the Amnesty scheme. Being aggrieved by the order of the learned Single Judge, the appellant filed W.A. No.1439/2022. However, the Division Bench of the Kerala High Court dismissed the Intra Court Appeal stating that the appellant had no reason to seek restoration of his appeal on initially withdrawing the same. Hence, this appeal.

We have heard learned senior counsel for the appellant and learned standing counsel for the respondent-State and the Revenue and perused the material on record.

No doubt, the appellant herein withdrew his appeal before the appellate authority with a view to seek the benefit under the Amnesty scheme, however, he could not pay up the amount in order to avail the benefit of the said scheme. In the circumstances, he moved an application seeking restoration of his appeal to be heard on merits.

One of the conditions for seeking the benefit under the Amnesty scheme is that there should be no pending proceeding and in order to comply with that condition, the appellant had withdrawn his appeal then pending before the appellate authority. But there is no bar as such for seeking restoration of the appeal if the assessee is unsuccessful in availing the benefit under the Amnesty Scheme, since the appeal being a statutory remedy the appellant had availed of such a statutory remedy and withdrawn the same only as a pre-condition for availing the benefit under the Amnesty Scheme. Since the appellant did not avail such a benefit he was entitled to be heard in the appeal on merits. Therefore he sought permission for restoration of the appeal by filing such an application. We find that the appellate authority as well as the High Court ought to have permitted the appellant herein to seek restoration of his appeal before the appellate authority so that the same could have been heard on merits.

Afterall, the appellate authority was seized of the appeal which was in the nature of a statutory appeal and if the appellant was unsuccessful therein he had further remedies in law. In view of the application filed by the appellant being rejected, neither the appeal has been restored nor has he been heard on merits and further remedies have also been foreclosed. On that short ground alone, the orders of the High Court as well as the appellate authority on the application filed by the appellant herein are set aside. The appeal before the KVATA No.174/2019 which was pending before the Joint Commissioner of Appeals is restored on the file of the said authority.

Since both parties are represented by their respective counsel they are directed to appear before the said appellate authority on 04.10.2023 at 11.00 A.M. On that date or on any other date(s), the appeal filed by the appellant shall be heard on merits and disposed of in accordance with law.

The appellant is also at liberty to seek interim relief before the appellate authority. If such an application is made, the same shall be considered expeditiously and disposed of in accordance with law.

The appeal is allowed and disposed of in the aforesaid terms.

No costs.

Pending application(s), if any, shall stand disposed of.