



2024/KER/28206

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 8TH DAY OF APRIL 2024 / 19TH CHAITHRA, 1946

WA NO. 498 OF 2024

AGAINST THE JUDGMENT DATED 22.02.2024 IN WP(C) NO.42535 OF 2023
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

LUKOSE. K.C.,
AGED 68 YEARS
PROPRIETOR, M/S. KBC GREEN PARK HOTEL, EDAT,
PAYYANNUR, KANNUR, PIN - 670307

BY ADVS.
SRI.R.SREEJITH
SMT.K.KRISHNA

RESPONDENTS/RESPONDENTS:

- 1 THE DEPUTY COMMISSIONER,
TAX PAYER SERVICES, KANNUR NORTH, STATE GOODS &
SERVICES TAX DEPARTMENT, KANNUR, PIN - 670002
- 2 THE COMMISSIONER OF COMMERCIAL TAXES,
STATE GST DEPARTMENT, TAX TOWERS, KILLIPPALAM,
KARAMANA, THIRUVANANTHAPURAM, PIN - 695002
- 3 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001

BY SR.GOV'T. PLEADER SRI.V.K.SHAMSUDHEEN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
08.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

The petitioner in WP(C).No.42535 of 2023 is the appellant herein aggrieved by the judgment dated 22.02.2024 of a learned Single Judge. Briefly stated, the Writ Petition was filed challenging Exts.P8 and P9 orders issued by the 1st respondent under the provisions of Section 7 of the Kerala General Sales Tax Act (hereinafter referred to as "the KGST Act") for the assessment years 2022-2023 and 2023-2024 finalising the assessment of the petitioner on compounded basis as contemplated under Section 7 of the KGST Act. It is not in dispute that for the said years, the petitioner had opted to pay tax on a compounded basis. The only issue urged by the appellant in the Writ Petition was with regard to the manner in which the tax at compounded rate was computed. It is the case of the appellant that during the previous years when the Covid-induced lockdown was in force, the appellant was permitted to effect over the counter sales despite having been issued a licence only for operating a bar attached hotel. It is the case of the appellant that since over the counter sales were not permitted for bar attached hotels the turnover pertaining to over the counter sales could not be reckoned for



:3:

WA No.498 of 2024

the purposes of computing the total turnover of the previous years relevant for computing the tax on compounded basis for the assessment years in question. It is the case of the appellant that the computation of compounded tax under Section 7 of the KGST Act, was an erroneous one and ought to have been interfered with by the learned Single Judge.

2. We have heard Smt. K.Krishna, the learned counsel for the appellant and Sri. V.K. Shamsudheen, the learned Senior Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and submissions made across the bar, and on a perusal of the impugned judgment, we see no reason to interfere with the well considered judgment of the learned Single Judge, which places reliance on the decision of this Court in **Kalyan Tourists Home v. State of Kerala [(2018) 52 GSTR 161 : 2017 (2) KLT 761]** to hold that the appellant having opted to pay tax on compounded basis in lieu of the regular basis of assessment cannot turn around and contend that the formula provided for payment of tax on compounded basis does not apply to him. We are also not persuaded to accept the argument of the learned counsel that the over the counter sale figures could not have been taken into consideration for computing the turnover of the bar attached hotel



:4:

WA No.498 of 2024

for the purposes of computing the tax liability u/s 7 of the KGST Act. We believe that the permission to effect over the counter sales of alcoholic liquor was a concession given to bar attached hotel owners to permit them to carry on business and tide over the COVID lockdown period. The appellant cannot now contend that the tax on such transactions should not be levied on him because he did not originally have the permission to effect such sales.

The Writ Appeal fails and is accordingly dismissed.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

SYAM KUMAR V.M.
JUDGE

mns