

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 7TH DAY OF OCTOBER 2022 / 15TH ASWINA, 1944

WP(C) NO. 14030 OF 2020

PETITIONER/S:

B. MADHUKUMAR
AGED 51 YEARS
SAI MADHAVAM, MAMPALLYKUNNAM, CHATHANNOOR P.O KOLLAM-
691 572.
BY ADVS.
HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT/S:

- 1 THE COMMERCIAL TAX OFFICER
CHATHANNOOR 691 572, KOLLAM DISTRICT.
- 2 THE TAHSILDAR (REVENUE RECOVERY)
TALUK OFFICE, KOLLAM-691 001.
- 3 THE VILLAGE OFFICER
MEENADU VILLAGE, KOLLAM DISTRICT PIN-691 334.
BY ADV. JASMIN M M, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner has approached this Court, being aggrieved by the fact that collection charges under the provisions of the Kerala Revenue Recovery Rules, 1968 (hereinafter referred to as 'the Rules') is being demanded from the petitioner illegally and without jurisdiction.

2. Brief facts of the case show that the petitioner who faced revenue recovery proceedings for recovery of amounts due from the petitioner under provisions of the Kerala Value Added Tax Act, approached this Court by filing W.P.(C) No.10234/2015 and obtained interim orders subject to payment of certain amounts. It is not in dispute before me that the petitioner remitted such amounts and that writ petition was disposed of by Ext.P4 judgment, directing the Government to consider certain claims made by the petitioner/assessee. When the matter was under consideration, as directed in Ext.P4 judgment, the Government introduced the 2017-Amnesty Scheme and the petitioner applied for settlement of the demands against him under the provisions of the Amnesty scheme. The said application was accepted and the petitioner remitted the

entire amounts due under the Amnesty Scheme. The petition is aggrieved by the fact that though the petitioner remitted the entire amount under the Amnesty Scheme, there is now a demand raised on the petitioner for payment of collection charges in terms of the Rules.

3. Learned counsel appearing for the petitioner refers to the provisions of Section 31A(2) of the Kerala Finance Act, 2017, which reads as follows:-

“(2) Notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968 (15 of 1968) reduction of arrears under Sub-section (1) shall be applicable to those cases in which revenue recovery proceedings have been initiated and the assessing authorities shall have the power to collect such amounts on settlement under sub-section (1) and where the amount is settled under sub-section (1) the assessing authorities shall withdraw the revenue recovery proceedings against such assesses which will then be binding on the revenue authorities and such assessee shall not be liable for payment of any collection charges.”

Learned counsel, with reference to the said provision, submits that since the petitioner had settled the demands against him by opting for the Amnesty Scheme of 2017, there cannot be any further demand for payment of collection charges.

4. Learned Government Pleader would vehemently oppose the grant of any relief to the petitioner. It is submitted that the petitioner had earlier approached this Court and had obtained stay of revenue recovery proceedings on deposit of

certain amounts. It is submitted that, going by the view taken by the Division Bench of this Court in ***W.A. No.1107 of 2009 (State of Kerala V. Shibu Kumar P.K.)***, even when the liability is cleared in instalments or by paying amounts imposed as a condition for stay by this Court, collection charges in terms of the Revenue Recovery Rules, 1968 will have to be paid by the defaulter. It is submitted that it is not in dispute that the petitioner had faced revenue recovery proceedings and certain amounts were paid by the petitioner only in compliance of conditions imposed by this Court while granting interim stay of the revenue recovery proceedings. It is submitted that if the view taken by the Division Bench of this Court is followed, the petitioner is clearly liable to pay collection charges.

5. Having heard the learned counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents, I am of the view that the petitioner is entitled to succeed. It is not in dispute before me that the petitioner had settled the liabilities in terms of the provisions contained in the Amnesty Scheme of 2017, which was introduced by the provisions contained in the Kerala Finance Act 2017. The provisions of Section 31A(2) of the Kerala Finance Act, 2017

makes it abundantly clear that notwithstanding anything contained in the Kerala Revenue Recovery Act, the assessee/defaulters will not be liable to pay any collection charges. Section 31A(2) of the Kerala Finance Act of 2017 starts with a *non obstante* Clause and therefore, it will have an overriding effect over the contrary provision contained in the Revenue Recovery Act or in the Rules framed thereunder.

In the light of the above finding, this writ petition is allowed. Ext.P6 notice issued by the 2nd respondent demanding collection charges and Ext.P8 order, which confirms such demand, will stand quashed. No costs.

sd/-

GOPINATH P.
JUDGE

ajt

APPENDIX OF WP(C) 14030/2020

PETITIONER EXHIBITS

EXHIBIT P1	COPY OF NOTICE IN FOR NO.1 ISSUED BY THE OFFICE OF THE 2ND RESPONDENT.
EXHIBIT P1(A)	COPY OF NOTICE IN FOR NO.10 ISSUED BY THE OFFICE OF THE 2ND RESPONDENT.
EXHIBIT P1(B)	COPY OF NOTICE IN FOR NO.1 ISSUED BY THE OFFICE OF THE 2ND RESPONDENT.
EXHIBIT P1(C)	COPY OF NOTICE IN FOR NO.10 ISSUED BY THE OFFICE OF THE 2ND RESPONDENT.
EXHIBIT P1(D)	COPY OF NOTICE IN FOR NO.1 ISSUED BY THE OFFICE OF THE 2ND RESPONDENT.
EXHIBIT P1(E)	COPY OF NOTICE IN FOR NO.10 ISSUED BY THE OFFICE OF THE 2ND RESPONDENT.
EXHIBIT P2	COPY OF ORDER IN WP(C) NO.10234/2015 OF THIS HON'BLE COURT.
EXHIBIT P3	COPY OF CHALLAN EVIDENCING PAYMENT OF RS.5 LAKHS.
EXHIBIT P3(A)	COPY OF CHALLAN EVIDENCING PAYMENT OF RS.15 LAKHS.
EXHIBIT P4	COPY OF JUDGMENT IN WP(C) NO.10234/15 OF THIS HON'BLE COURT.
EXHIBIT P5	COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P6	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P7	COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
EXHIBIT P7	COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
EXHIBIT P8	COPY OF REPLY ISSUED BY THE 2ND RESPONDENT
EXHIBIT P9	COPY OF RECEIPT ISSUED BY THE 3RD RESPONDENT.
EXHIBIT P10	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.