



2024:KER:49732

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.

THURSDAY, THE 4TH DAY OF JULY 2024 / 13TH ASHADHA, 1946

WA NO. 906 OF 2024

AGAINST THE ORDER/JUDGMENT DATED IN WP(C) NO.11992 OF 2024
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER

AARON CONSTRUCTION CO.
SECOND FLOOR, 61/1137, GOOD NEWS BUILDING,
SHARADI LANE, PERUMANOOR P.O., ERNAKULAM
REPRESENTED BY ITS MANAGING PARTNER SUSIE PAUL.,
PIN - 682015

BY ADVS.
K.T.THOMAS
MATHEW BOB KURIAN

RESPONDENTS

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY (REVENUE), MINISTRY OF
FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW
DELHI, PIN - 110001
- 2 STATE OF KERALA
REP. BY SECRETARY TO GOVERNMENT, FINANCE
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN
- 695001
- 3 THE SUPERINTENDENT
OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX &
CENTRAL EXCISE, ERNAKULAM RANGE - I, CENTRAL
EXCISE BHAVAN, KATHRIKADAVU, KOCHI, PIN - 682017
BY ADV R.HARISHANKAR
SC: R HARISHANKAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
04.07.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



J U D G M E N T
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Dr. A.K.Jayasankaran Nambiar, J.

The petitioner in W.P(C)No.11992 of 2024 is the appellant herein aggrieved by the judgment dated 03.04.2024 of the learned Single Judge in the writ petition.

2. Briefly stated the facts necessary for disposal of this writ appeal are as follows:

The appellant herein had preferred the writ petition impugning Ext.P4 best judgment assessment order passed by the assessing authority under Section 62 of the CGST/SGST Act ('the Act' for short). It is apparent that the appellant who was obliged to file returns under the Act, in its capacity as a registered dealer, failed to submit returns for more than six months and therefore, steps were taken by the assessing authority for cancellation of its registration under the Act. Simultaneously, the assessment on best judgment basis under Section 62 of the Act was also completed taking note of the fact that the appellant had not filed



any return as provided under the Section. What is relevant however is that, even after receipt of the assessment order under Section 62, the appellant did not avail the opportunity of filing a return as provided under Section 62(2) of the Act which, if filed, could have resulted in an automatic cancellation of the assessment order passed on best judgment basis. Taking note of the said omission on the part of the appellant, the learned Single Judge before whom the writ petition came up for hearing, proceeded to dismiss the writ petition in its challenge against Ext.P4 assessment order.

3. Before us, it is the submission of the Sri.K.T. Thomas, the learned counsel for the appellant that the learned Single Judge ought to have found that the respondents had not complied with the requirement of issuing a notice prior to passing the order on best judgment basis under Section 62(1) of the Act. It is the further contention that the appellant being a new venture, it was not aware of the requirements of the statute with regard to filing of returns and the consequences of non filing of the said returns.

4. Per contra, it is the submission of Sri.Harishankar, the



learned Standing Counsel for the 3rd respondent, that the non filing of return even after the receipt of the assessment order passed on best judgment basis under Section 62(2) of the Act indicates that the attitude of the appellant-assessee was one of non-co-operation in the assessment proceedings. It is pointed out that the assessment order passed under Section 62 would have to be upheld in the absence of any positive step taken by the appellant to get the same nullified in terms of Section 62(2) of the Act. As regards the cancellation of the registration, it is his submission that if the appellant is aggrieved by the same, it is open to the appellant to approach the statutory appellate authority against the order of cancellation of registration.

5. On a consideration of the rival contentions, we are of the view that the non filing of returns by the appellant, even after receipt of Ext.P4 assessment order, and within thirty days thereafter, is fatal to the case of the appellant. While it may be true that the respondents did not issue a formal notice as required under Section 62(1) of the Act before completing the assessment on best judgment basis under the said provision, the fact remains that the appellant could have obtained a nullification



of the said assessment order, if he had filed the return at least within thirty days of the receipt of the assessment order. It is not in dispute that the appellant received the assessment order. It is also not in dispute that within thirty days thereafter, he did not file his returns. Under such circumstance, the appellant has only itself to blame for the predicament that it finds itself in, since the statutory provisions grant sufficient opportunities to an assessee to ensure that an assessment is completed, as far as possible, based on the returns filed by the assessee.

We therefore, see no reason to interfere with the impugned judgment of the learned Single Judge. The writ appeal fails and is accordingly dismissed.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR

JUDGE

Sd/-

SYAM KUMAR V.M.

JUDGE