



2024:KER:86407

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 19TH DAY OF NOVEMBER 2024 / 28TH KARTHIKA, 1946

WA NO. 1652 OF 2020

AGAINST THE JUDGMENT DATED 22.09.2020 IN WP(C) NO.13815 OF
2020 OF HIGH COURT OF KERALA

APPELLANTS:

- 1 THE ASSISTANT COMMISSIONER OF STATE TAX,
SPECIAL CIRCLE, STATE GOODS AND SERVICE TAX DEPARTMENT,
KANNUR-670002.
- 2 THE COMMISSIONER,
STATE GOODS AND SERVICE TAX DEPARTMENT, KARAMANA,
THIRUVANANTHAPURAM-695002.
- 3 STATE OF KERALA,
REPRESENTED BY SECRETARY (TAXES), SECRETARIAT,
THIRUVANANTHAPURAM-695001.

BY GP.RESMITHA RAMACHANDRAN

RESPONDENT/S:

BHIMA JEWELLERY AND DIAMONDS P. LTD.,
ABHIMAN TOWER, DOOR NO. 7/271-A, THANA, KANNUR,
REPRESENTED BY ITS MANAGING DIRECTOR, G. BALACHANDRA
KIRAN.

ADV.K.P.ABDUL AZEES

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON 19.11.2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Dr. A.K. Jayasankaran Nambiar, J.

This writ appeal has been preferred by the State, aggrieved by the judgment dated 22.09.2020 of a learned Single Judge in W.P(C).No.13815 of 2020.

2. The brief facts necessary for the disposal of this writ appeal are as follows:

The respondent/assessee had filed the writ petition, challenging an assessment order dated 16.03.2020 that was passed against it under Section 25(1) of the Kerala Value Added Tax Act, (for short, "the KVAT Act") for the assessment year 2013-2014. The primary contention taken in the writ petition for impugning the assessment order was that it was vitiated on account of a non-compliance with the rules of natural justice. It was the contention of the assessee before the writ court that the notice under Section 25(1) of the KVAT Act was issued only on 12.02.2020 and the assessment itself was completed on 16.03.2020 without affording an effective opportunity to the



assessee to reply to the notice. In particular, the assessee also pointed out that the reason given by the Assessing Officer in the order dated 16.03.2020 for acting in a hasty manner to complete the assessment was patently wrong. While the Assessing Officer was of the view that he had to complete the assessment by 31.03.2020, according to the assessee, the said assumption was wrong since, as per the law as it stood then, only a pre-assessment notice under Section 25(1) of the KVAT Act had to be issued before 31.03.2020 and the assessment pursuant thereto could have been completed beyond 31.03.2020.

3. The learned Single Judge, who considered the writ petition, appears to have assumed that the case projected by the assessee was one of the assessment being barred by limitation. As there were other writ petitions that had been disposed by finding that a notice under Section 25(1) of the KVAT Act had been issued beyond the period of limitation, based on the judgment of this Court in **Baiju A.A. & Others v. State Tax Officer [2020(1) KHC 39]** and **MCP Enterprises and Others v. State of Kerala & Others [2020 (1) KHC 127]**, the learned Single Judge allowed the writ petition by finding that the



impugned assessment order was barred by limitation.

4. Before us, it is the submission of Smt. Resmitha Ramachandran, the learned Government Pleader for the appellant/State that the learned Single Judge erred in assuming that the case of the writ petitioner was one of the assessment order being barred by limitation. She points out to the specific paragraph in the writ petition, as also to the grounds in the writ petition, which state emphatically that the assessment order would not be barred by limitation as was believed by the Assessing Officer while completing the assessment in haste. It is her contention that the argument of the learned counsel for the writ petitioner was essentially with regard to violation of the rules of natural justice while passing the assessment order, and in that context, the learned Single Judge ought not to have allowed the writ petition by finding the assessment order as having been passed beyond the period of limitation.

5. We have also heard Sri.Abdul Azeez, the learned counsel for the writ petitioner/assessee.



6. On a consideration of the rival submissions, we find force in the submission of the learned Government Pleader, for we find that the assessment year in question is 2013-14 under the KVAT Act. The KVAT Act was amended in 2017, whereby the period of limitation for re-opening the assessment was enhanced from five years to six years. No doubt, in those cases where the erstwhile period of limitation of five years had already expired before the date of the amendment of Section 25(1) in 2017, the Revenue would not be permitted to re-open assessments that had been settled, through a fresh notice issued thereafter invoking the six-year period of limitation. In the instant case, however, we find that the assessment year in question is 2013-14 and the limitation period for re-opening assessment under Section 25(1) of the KVAT Act was six years. The notice under Section 25(1) having been issued on 12.02.2020 was well within the period of six years contemplated under Section 25(1) as it stood then. No doubt, the Assessing Authority assumed that he had to complete the assessment pursuant to the notice issued under Section 25(1), before 31.03.2020. This perhaps may have led the Assessing Officer to act in haste, as alleged by the writ petitioner. We also find that



the only relief that the assessee sought in the writ petition was for a re-examination of the issue on merits before the Assessing Officer, as the assessee itself did not have a case of the assessment order being barred by limitation. It was only on account of the erroneous assumption of the learned Single Judge that the writ petition came to be allowed on the ground of limitation. As we have found that the limitation issue did not arise in the writ petition, we set aside the impugned judgment of the learned Single Judge and allow this appeal to that limited extent. While doing so, however, we take note of the main prayer in the writ petition preferred by the assessee, which was essentially to have the Assessing Officer decide the issue of assessment for the assessment year 2013-14 afresh, on merits and after hearing it. Finding from the assessment order that was impugned in the writ petition that the writ petitioner/assessee was not heard prior to the passing of the assessment order, we are inclined to set aside Ext.P3 order that was impugned in the writ petition, and remand the matter to the Assessing Authority for a fresh decision on merits, after hearing the petitioner/assessee. To this extent therefore, the writ petition preferred by the assessee is also allowed, by



setting aside Ext.P3 order. We make it clear that the Assessing Authority shall afford the writ petitioner/assessee an opportunity of being heard in the matter and pass a reasoned order of assessment, on merits, within a period of six weeks from the date of receipt of a copy of this judgment. We further make it clear that it shall not be open to the assessee to raise the issue of limitation, which, we have found, does not arise on the facts of this case.

The Writ Appeal is thus disposed as above.

Sd/-

**DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

Sd/-

**K.V. JAYAKUMAR
JUDGE**

msp