Seemas Wedding Collections, vs Intelligence Officer,

Seemas Wedding Collections, vs Intelligence Officer,

SooperKanoon Citation : sooperkanoon.com/1774408

Court : Kerala

Decided On : Nov-27-2020

Judge : Honourable Dr. Justice a.K.Jayasankaran Nambiar

Appeal No. : WP(C)/11994/2019

Appellant : Seemas Wedding Collections,

Respondent : Intelligence Officer,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR FRIDAY, THE 27TH DAY OF NOVEMBER 2020 / 6TH AGRAHAYANA, 1942 WP(C).No.11994 OF 2019(Y) PETITIONER: SEEMAS WEDDING COLLECTIONS, MARKET JUNCTION, NH BYE PASS, ALUVA- 683501 (REPRESENTED BY K.P.SHEMEER, PARTNER). BY ADVS. SRI.K.N.SREEKUMARAN SRI.P.J.ANILKUMAR (A-1768) SRI.N.SANTHOSHKUMAR RESPONDENT: 1 INTELLIGENCE OFFICER, SQUAD NO.II, STATE GOODS AND SERVICE TAX DEPARTMENT, TAX COMPLEX, PERUMANOOR, ERNAKULAM, KOCHI- 682015. 2 STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,

GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001. BY GOVERNMENT PLEADER SMT.DR.THUSHARA JAMES THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27.11.2020 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No.11994 OF 2019(Y) 2

JUDGMENT

The petitioner, who was a registered dealer under the Kerala Value

Added Tax Act (hereinafter referred to as the KVAT Act) had filed returns for the assessment years 2009-2010 to 2011 to 2012 under the said Act, and had duly discharged his tax liability in accordance with the said returns. The said returns were accepted and, at any rate, there were no proceedings initiated against him under Section 25(1) or Section 42 of the KVAT Act, within the statutory period of 5/6 years prescribed for the same under the Act as it then stood. It would appear, however, that based on an order passed by the Income Tax Settlement Commission, Chennai, for the assessment years 2010-2011 to 2012-2013 under the Income Tax Act, for which the relevant financial years were 2009-2010 to 2011-2012, the respondents initiated penal proceedings under Section 67(1) of the KVAT Act, proposing to impose a penalty on the petitioner for the assessment years 2009-2010 to 2011-2012. Although the petitioner preferred detailed replies to the show cause notices issued to him in that regard, the 1st respondent proceeded to confirm the demand of penalty on the petitioner for the assessment years in question under Section 67 (1) (b) (d) and (j) of the Act. In the Writ Petition, the petitioner impugns the said penalty orders, inter alia, on the contention that the penalty proceedings were initiated against him beyond the period of 5/6

years that was stipulated for reopening assessment under the KVAT Act. It is his contention that, although the provisions of Section 67 of the KVAT Act do not contain any express provision requiring penal proceedings to be initiated within any particular time frame, it is well settled that in the absence of a period of limitation under the statute, a reasonable period of limitation has to govern the initiation of proceedings under the Act. He places reliance on the judgment of this Court in MCP Enterprises (M/S.) & Others V. State of Kerala & Others [2020(1) KHC 127] and Philips India V. Assistant Commissioner [(2016) 96 VST 229].

2. The learned Government Pleader Smt.Dr.Thushara James, would oppose the prayer of the petitioner for quashing the impugned

order on the contention that assessment proceedings and penal

proceedings are independent proceedings under the KVAT Act and, inasmuch as Section 67 of the KVAT Act does not prescribe any particular period of limitation for initiation of penal proceedings, even if a reasonable period of limitation is read in, the commencement of the said period of limitation must run from the date of arising of the cause of action under S. 67 (1) (a) to (l) of the Act. The contention, in other words, is that although it could be argued that a reasonable period of limitation

has to inform the initiation of proceedings under Section 67 of the Act, the said period of limitation would commence only from the respective dates of detection of the offences enumerated in Section 67 (1) of the Act. In the instant case, it is pointed out that the information from the Income Tax Settlement Commissioner, as regards the untrue or incorrect nature of the returns filed by the petitioner for the assessment years in question, came to be known to the respondents only on 28.02.2017, and hence, the notices issued to the petitioner for the assessment years from 2009-2010 to 2011-2012 in the instant case cannot be said to be beyond the reasonable period of limitation under Section 67 of the Act.

3. I have heard Sri.K.N.Sreekumaran, the learned counsel for the petitioner and Smt.Dr.Thushara James, the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case

and submissions made across the bar, I find that it is not in dispute that the assessments pertaining to the petitioner for the assessment years 2009-2010 to 2011-2012 under the KVAT Act were completed on self assessment basis taking note of the returns filed by the petitioner for the said years, and that tax was duly paid by the petitioner on the basis of those returns. There were evidently no notices issued to the petitioner

 reopening the said assessments within the statutorily permitted period of

respondents, however, obtained information from the Income Tax Settlement Commission that suggested that the petitioner had submitted untrue or incorrect returns to the KVAT authorities during the assessment years in question. Immediately thereafter they caused notices to be issued proposing the imposition of penalties under Section 67 of the KVAT Act, and the proceedings so initiated culminated in the orders that are impugned in the present Writ petition.

5. While it could be argued that the notices proposing penalty

under Section 67(1) of the KVAT Act were issued within a reasonable period of limitation (5/6 years) from the date of detection of the offence of submission of untrue or incorrect returns by the assessee, and the penalty imposed on the petitioner justified on that basis, I find that upholding the impugned penalty orders in the instant case could result in an anomalous situation where the assessments of the petitioner, under the very same statute, have been accepted by the department based on the returns filed by the petitioner assessee. The tax payments effected based on those returns have also been accepted as correct by the respondents. If the respondents are now permitted to assail the said assessments, albeit indirectly, through the imposition of penalties, then it

would tantamount to permitting the respondents to redetermine the tax liability of the petitioner for the said assessment years, an act that they cannot otherwise do on account of the provisions of Section 25(1)/42(3) of the KVAT Act. I also find that, on account of the assessments of the petitioner not having been assailed or reopened during the time permitted under the statute, the respondents would be estopped from questioning the correctness of the returns and accounts filed by the petitioner during the relevant assessment years. It would follow therefore that for the very same assessment years, the petitioner cannot be subjected to penalties on grounds that were found acceptable for the purposes of assessment. To uphold the impugned penalty orders would result in the anomalous situation where the returns submitted by the assessee were seen as true and correct for the purposes of assessment but are now seen as untrue and incorrect for the purposes of penalty proceedings. It is trite that in taxation matters, wherever penalty proposals are integrally connected with the assessments, the penalties should ideally follow the assessments. That apart, an officer determining the liability of an assessee to penalty, cannot ignore the assessment proceedings that have taken place in respect of the same assessee for the assessment year in question. I am, therefore, of the view that the assessments completed in favour of the petitioner for the assessment years in question could not have been ignored by the authorities that

WP(C).No.11994 OF 2019(Y) 7 passed the impugned orders of penalty. The assessment not having been challenged, the very basis on which the penalty orders have been passed is wrong. I therefore allow this Writ Petition by quashing the impugned penalty orders with consequential reliefs to the petitioner.

Sd/- A.K.JAYASANKARAN NAMBIAR JUDGE mns/27.11.2020 WP(C).No.11994 OF 2019(Y) 8 APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 20.12.2018 FOR 2010-11 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P2 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 20.12.2018 FOR 2011-12 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P3 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 20.12.2018 FOR 2012-13 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P4 TRUE COPY OF THE REPLY DATED 04.01.2019 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. EXHIBIT P5 TRUE COPY OF THE REVISED SHOW CAUSE NOTICE DATED 05.01.2019 FOR 2009-10 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P6 TRUE COPY OF THE REVISED SHOW CAUSE

NOTICE DATED 05.01.2019 FOR 2010-11 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P7 TRUE COPY OF THE REVISED SHOW CAUSE NOTICE DATED 05.01.2019 FOR 2011-12 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P8 TRUE COPY OF THE REPLY DATED 12.03.2019 FILED BEFORE THE 1ST RESPONDENT. EXHIBIT P9 TRUE COPY OF ORDER NO.ISE/II/REIC2/2018-19(2009-10) DATED 18.03.2019 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P10 TRUE COPY OF ORDER NO.ISE/II/REIC2/2018-19(2010-11) DATED 18.03.2019 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P11 TRUE COPY OF ORDER NO.ISE/II/REIC2/2018-19(2011-12) DATED 18.03.2019 ISSUED BY THE 1ST RESPONDENT. RESPONDENTS EXHIBITS:NIL //TRUE COPY// P.A TO JUDGE