# M.V. Viswanathan Vs. Asst. Commissioner (Wc and Lt)

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**SooperKanoon Citation** : sooperkanoon.com/50021

**Court** : Kerala

**Decided On :** Mar-19-2015

**Judge** : Honourable Mr. Justice a.K.Jayasankaran Nambiar

**Appellant** : M.V. Viswanathan

**Respondent** : Asst. Commissioner (Wc and Lt)

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR THURSDAY, THE19H DAYOF MARCH201528TH PHALGUNA, 1936 WP(C).No. 2217 of 2015 (B) --------------------------- PETITIONER(S): -------------------------- M.V.VISWANATHAN GOVERNMENT CONTRACTOR, 392/V2D FLOOR, FATHIMA BUILDING, OPP.GANAPATHY TEMPLE ELOOR ROAD, KALAMASSERY, ERNAKULAM DISTRICT. BY ADVS.SRI.HARISANKAR V.MENON SMT.MEERA V.MENON RESPONDENT(S): ---------------------------- 1. ASST. COMMISSIONER (WC & LT) DEPARTMENT OF COMMERCIAL TAXES OLD RAILWAY STATION ROAD, ERNAKULAM, KOCHI-18.

2. COMMISSIONER OF COMMERCIAL TAXES TAX TOWERS, KILLIPPALAM, THIRUVANANTHAPURAM.695 001.

3. THE EXECUTIVE ENGINEER PROJECT DIVISION, ADOOR, KERALA WATER AUTHORITY ADOOR. 691 579.

4. THE EXECUTIVE ENGINEER PROJECT DIVISION, ADOOR, KERALA WATER AUTHORITY ADOOR. 691 579.

5. PROJECT MANAGER (EXE. ENGINEER) UIDSSMT PROJECT DIVISION, KERALA WATER AUTHORITY ALAPPUZHA. 688 001.

6. THE EXECUTIVE ENGINEER PROJECTION DIVISION ADOOR, KERALA WATER AUTHORITY KOTTAYAM. 686 001. R3-R6 BY ADV. SRI.GEORGE MATHEW, SC, KERALA WATER AUTHORITY R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON1903-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 2217 of 2015 (B) --------------------------- APPENDIX PETITIONER(S)' EXHIBITS ------------------------------------ EXT.P1- COPY OF NOTICE ISSUED BY THE1T RESPONDENT DATED1507.2014. EXT.P2- COPY OF REPLYSUBMITTED BY THE PETITIONER DATED0408.2014. EXT.P3- COPY OF

ORDER
ISSUED BY THE1T RESPONDENT DATED1812.2014. EXT.P4- COPY OF CERTIFICATE ISSUED BY THE3D RESPONDENT DATED1812.2014. EXT.P4(A)- COPY OF CERTIFICATE ISSUED BY THE3D RESPONDENT DATED1812.2014. EXT.P4(B)- COPY OF CERTIFICATE ISSUED BY THE4H RESPONDENT DATED1812.2014. EXT.P4(C)- COPY OF CERTIFICATE ISSUED BY THE5H RESPONDENT DATED1812.2014. EXT.P4(D)- COPY OF CERTIFICATE ISSUED BY THE5H RESPONDENT DATED1812.2014. EXT.P4(E)- COPY OF CERTIFICATE ISSUED BY THE6H RESPONDENT DATED1812.2014. RESPONDENT(S)' EXHIBITS: NIL. -------------------------------------- //TRUE COPY// P.S.TO JUDGE A.K.JAYASANKARAN NAMBIAR, J.

------------------------------ W.P.(C).NO.2217 OF2015(B) ---------------------------------- Dated this the 19th day of March, 2015

## JUDGMENT

The challenge in the writ petition is against Ext.P3 order passed by the 1st respondent, completing the assessment of the petitioner for the assessment year 2011-12 under the Kerala Value Added Tax Act. The sole ground of challenge against Ext.P3 order in the writ petition is that, of the various amounts that were deducted towards tax by the awarder of the work to the petitioner, the 1st respondent, while completing the assessment, has not given credit to the entire deductions effected by the awarder, and a substantial amount has not been given credit to while finalising the assessment against the petitioner. It is the contention of the petitioner that, the details of the amounts deducted from payments made to the petitioner, have already been furnished to the respondents by the Kerala Water Authority, who was the awarder of the work, and hence, merely for the reason that some of the payments were made to the wrong office by the Kerala Water Authority, the petitioner could not be denied the benefit of the said payments, made for and on behalf of the petitioner. The learned Government Pleader, on instructions, would submit that W.P.(C).No.2217/2015 2 as per the statutory provisions, the awarder of the work, who is obliged to deduct tax at source from payments made to the contractor, is obliged to make the payments to the assessing authority having jurisdiction over the contractor. In the instant case, the Kerala Water Authority, as awarder of the work, had effected payments to the wrong office, and it was for this reason that the petitioner was not able to get credit of the amounts paid by the Kerala Water Authority to the respondents.

2. A counter affidavit has been filed on behalf of respondents 3 to 6, wherein details of the payments made by the Kerala Water Authority to the Taxes Department, pursuant to deductions effected from payments made to petitioner, have also been enumerated. The details regarding the cheque numbers and dates whereby the payments are made to the Commercial Taxes Department is also furnished in the counter statement filed on behalf of the said respondents.

3. I have heard the learned counsel appearing for the petitioner, the learned Government Pleader appearing for respondents 1 and 2 and also the learned Standing counsel appearing W.P.(C).No.2217/2015 3 for respondents 3 to 6.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that this is a case where the Kerala Water Authority has effected deductions of tax from out of the payments that were made to the petitioner. It is not in dispute that the said tax amounts that were deducted, were also paid to the Commercial Taxes Department. Some of the payments, however, were made to the wrong office, in that, it was made to an office other than to the office of the assessing officer having jurisdiction over the petitioner. The learned Government Pleader, on instructions, would submit that an amount of Rs.24,93,056/- has been received in the office of the C.T.O., Pathanamthitta as per the details obtained from the Sub Treasury, Pathanamthitta. These amounts are relatable to the payments effected to the petitioner by the Kerala Water Authority, and in respect of which, the petitioner has not been given credit in Ext.P3 order. As this matter has not engaged the attention of the 1st respondent while completing the assessment of the petitioner, I quash Ext.P3 order of the 1st respondent and direct him to pass fresh orders of assessment in relation to the petitioner for the assessment year 2011-12, after hearing the petitioner, within a period W.P.(C).No.2217/2015 4 of two months from the date of receipt of a copy of this judgment. The 1st respondent shall verify the details of payments made by the Kerala Water Authority to the petitioner, including the tax amounts deducted by the Kerala Water Authority and paid over to the Commercial Taxes Department. If the said payments have been received by the Commercial Taxes Department, then, notwithstanding that the payments have been made to the wrong office, the 1st respondent shall give credit to the petitioner for the tax amounts received on his behalf from the Kerala Water Authority. To enable the 1st respondent to pass fresh orders as directed, I direct the petitioner to appear before the 1st respondent at his office at 11.00 a.m. on 30.3.2015. The petitioner shall produce a copy of this judgment, along with a copy of the writ petition, as also the statement filed on behalf of the Kerala Water Authority, before the 1st respondent. The writ petition is disposed as above. A.K.JAYASANKARAN NAMBIAR JUDGE prp