



2023:KER:74600

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 22ND DAY OF NOVEMBER 2023 / 1ST AGRAHAYANA, 1945

WP(C) NO. 27489 OF 2023

PETITIONERS:

AL-MAHAMOOD,
PROP: MAHAMOOD SUBAIR,
I. S. PRESS ROAD, ERNAKULAM, KOCHI-682018
(NOW IN PCA BUILDING, 66/1050 (B), 2ND FLOOR,
NEAR DARUL- ULOOM SCHOOL, VEEKSHANAM ROAD,
NORTH ERNAKULAM, KOCHI, PIN - 682018.

BY ADVS.

SRI. K. N. SREEKUMARAN

SRI. P. J. ANILKUMAR

SRI. N. SANTHOSHKUMAR

RESPONDENTS:

- 1 COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES DEPARTMENT,
(NOW STATE GST DEPARTMENT), 1ST CIRCLE,
CLAS TOWER, OLD RAILWAY STATION ROAD,
ERNAKULAM, KOCHI, PIN - 682018.
- 2 DEPUTY COMMISSIONER,
AUDIT DIVISION-3, STATE GOODS & SERVICE TAX DEPARTMENT,
GROUND FLOOR, CLAS TOWER, OLD RAILWAY STATION ROAD,
KACHERIPADY, ERNAKULAM, KOCHI, PIN - 682018.
- 3 ADMINISTRATOR,
UNION TERRITORY OF LAKSHADWEEP,
WILLINGDON ISLAND, KOCHI, PIN - 682003.

BY ADV.

SRI. SAJITH KUMAR V. - SC - LAKSHADWEEP ADMINISTRATOR

SRI. JASMINE M. M. - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No.27489 of 2023**

Dated this the 22nd day of November, 2023

JUDGMENT

1. The petitioner has approached this Court in this writ petition for a direction to the 3rd respondent to furnish the shipping document or best evidence in respect of the supplies made by the petitioner to the Union Territory of Lakshadweep Administration for the purpose of availing concessional rate of tax @ 4% under proviso to Section 6(1) of the KVAT Act. In the alternative, the petitioner had prayed for a direction to the 3rd respondent to pay the amount of tax concession availed by the 3rd respondent along with interest by virtue of declaration in Form 41 and the provisions in Section 6 (1) read with 12C of the KVAT Act and the Rules made thereunder.

2. According to the petitioner, the petitioner had sold various items to the Union Territory of Lakshadweep Administration and therefore, he is entitled to reduction in levying of tax @ 4% under KVAT Act on condition of filing necessary declaration from the Administrator, Union Territory of Lakshadweep as per Section 6(1) read with Rule 12C (1) of the KVAT Rules.



3. The petitioner's claim for concession of 4% availed on the strength of Form 42 was rejected for want of copies of the shipping documents. The period involved is from 2005 to 2011. The assessment orders came to be passed for the financial years 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 in Exhibits P-3 to P-7. For the financial year 2010-11, the assessment order was passed on 16.10.2012 in Exhibit P-8.

4. Aggrieved by Exhibits P-3 to P-8 assessment orders, the petitioner filed W.P.(C) No. 8022 of 2011 before this Court. This Court vide the Judgment and order dated 04.11.2015 quashed the assessment orders with a direction to accept the claim of the petitioner for concessional rate of tax on the basis of the declaration in Form 42. In compliance to the Judgment and order dated 04.11.2015 passed in W.P.(C) No.8022 of 2011, the assessment orders for the assessment years 2005-06 to 2010-11 were revised in respect of the sales effected by the petitioner to the Union Territory of Lakshadweep Administration and concessional tax @ 4% was levied. According to the petitioner, petitioner was entitled to refund in view of the revised assessment orders and the petitioner had paid excess tax for all the years.



5. The State, however, filed the W.A. No. 379 of 2016 against the order of the learned Single Judge dated 04.11.2015 passed in W.P. (C) No. 8022 of 2011. The learned Division Bench vide the Judgment and order dated 26.08.2021 allowed the writ appeal filed by the State with the following observations;

“6.4 Hence, for the said purpose we grant liberty to dealers, in these cases, to represent to the Administrator, Union Territory of Lakshadweep or the buyer under respective invoices, by enclosing a copy of this judgment to furnish copies of shipping bills or similar documents duly attested by port authorities evidencing shipment of goods covered by respective invoices, within four weeks from the date of receipt of a copy of the judgment. Upon such request being received, the Administrator, Union Territory of Lakshadweep, the Administrator/buyer as the case may be, shall verify and furnish the best of evidence available in this behalf of shipment of goods to Lakshadweep within eight weeks from the date of receipt of the request from the writ petitioners/dealers. Thereafter, the dealer is given liberty to place the said proof before the Assessing Officer. The Assessing Officer shall reassess and pass orders by adverting to the documents now produced by the dealer in accordance with law. In cases where the dealer has already furnished declaration in Form No.42 and utilisation certificate by authority from Union Territory, the same could be considered in terms of Rule 12C and reassessment orders are made.”



6. Thus the petitioner was granted liberty to represent the Administrator, Union Territory of Lakshadweep or the buyer under respective invoices, by enclosing a copy of the Judgment passed by the learned Division Bench to furnish copies of shipping bills or similar documents duly attested by port authorities evidencing shipment of goods covered by respective invoices, within four weeks from the date of receipt of a copy of the Judgment. The Administrator was directed to verify and furnish the best evidence available in this behalf on shipment of goods to the Union Territory of Lakshadweep within eight weeks from the date of receipt of the request from the writ petitioner/dealer. Thereafter, the dealer was given liberty to produce the proof before the Assessing Officer and thereafter, the Assessing Officer would reassess and pass orders by adverting to the documents produced by the dealer in accordance with the law.

7. In pursuance to the liberty granted by the learned Division Bench, the petitioner had made few requests before the Administrator, Union Territory of Lakshadweep for providing the bill of entry or best evidences in respect of the supplies made by the



petitioner to the Union Territory of Lakshadweep Administration. The petitioner thereafter filed the contempt petition, CCC No. 2468 of 2022 along with CCC No. 2446 of 2022. However, these contempt petitions came to be dismissed vide the Judgment and order dated 10.07.2023 with liberty to challenge the communication dated 25.11.2021 in Exhibit P-20 issued by the 3rd respondent in this regard.

8. Now, the petitioner has filed this writ petition before this Court. The matter is of 2005-06 to 2010-11. According to the petitioner he has made supplies and sold goods to the Administration, Union Territory of Lakshadweep and he has raised invoices. The petitioner had earlier approached this Court for almost similar reliefs and the learned Division Bench in writ appeal granted liberty to the petitioner to approach the Administrator, Union Territory of Lakshadweep for the required documents or best evidence. As the documents sought for by the petitioner are for the period of 2005-06 to 2010-11, the petitioner's request could not be complied with by the 3rd respondent for which the petitioner had filed contempt petition and the contempt petition also came to be dismissed. Now for the very same purpose the petitioner has filed



this writ petition.

9. In the counter affidavit filed on behalf of the 3rd respondent, the Administrator, Union Territory of Lakshadweep it is stated that the petitioner is seeking shipping documents from the Administrator after lapse of several years. the petitioner never claimed or insisted for shipping documents at the time of delivery/supply of goods. The purchases were made during 2005 to 2010 and once the petitioner's claim for concessional rate of tax @ 4% was rejected, the petitioner started litigation. Considering the fact that at the earlier round of litigation before this Court, this Court has not granted similar reliefs as sought for in this writ petition, I am of the considered view that the present writ petition is not maintainable. The Union Territory of Lakshadweep Administration may be correct in saying that for supplies made during 2005 to 2010, at this point of time documents may not be available. In view thereof, I find no ground to issue direction as sought in this writ petition. Therefore, the present writ petition is hereby dismissed, however, devoid of any cost.

Sd/-
DINESH KUMAR SINGH
JUDGE

Svn

**APPENDIX OF WP(C) 27489/2023****PETITIONER'S EXHIBITS**

- EXHIBIT P1 TRUE COPIES OF SAMPLE DECLARATIONS IN FORM 42 FILED BY THE PETITIONER BEFORE 1ST RESPONDENT
- EXHIBIT P2 TRUE COPY OF THE LETTER NO.F 2/43/2005-AB2 DATED 3.11.2010 ISSUED BY THE 3RD RESPONDENT TO THE COMMISSIONER
- EXHIBIT P3 TRUE COPY OF THE ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR THE YEAR 2005-06 DATED 2.11.2010 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P4 TRUE COPY OF THE ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR THE YEAR 2006-07 DATED 2.11.2010 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P5 TRUE COPY OF THE ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR THE YEAR 2007-08 DATED 2.11.2010 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P6 TRUE COPY OF THE ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR THE YEAR 2008-09 DATED 2.11.2010 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P7 TRUE COPY OF THE ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR THE YEAR 2009-10 DATED 2.11.2010 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P8 TRUE COPY OF THE ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR 2010-11 DATED 16.10.2012 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P9 TRUE COPY OF THE JUDGMENT DATED 4.11.2015 IN WPC 8022/2011 OF THIS HON'BLE COURT
- EXHIBIT P10 TRUE COPY OF THE REVISED ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR 2005-06 DATED 27.5.2016 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P11 TRUE COPY OF THE REVISED ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR 2006-07 DATED 27.5.2016 ISSUED BY THE 1ST RESPONDENT



- EXHIBIT P12 TRUE COPY OF THE REVISED ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR 2007-08 DATED 27.5.2016 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P13 TRUE COPY OF THE REVISED ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR 2008-09 DATED 27.5.2016 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P14 TRUE COPY OF THE REVISED ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR 2009-10 DATED 27.5.2016 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P15 TRUE COPY OF THE REVISED ASSESSMENT ORDER UNDER TIN NO.32071574924 FOR 2010-11 DATED 27.5.2016 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P16 TRUE COPY OF THE JUDGMENT IN WA 379/2016 DATED 26.8.2021 OF THIS HON'BLE COURT
- EXHIBIT P17 TRUE COPY OF THE LETTER DATED 15.9.2021 ISSUED BY THE 3RD RESPONDENT
- EXHIBIT P18 TRUE COPY OF THE LETTER DATED 4.3.2022 FILED BEFORE THE 3RD RESPONDENT
- EXHIBIT P19 TRUE COPY OF THE COMMON JUDGMENT DATED 10.7.2023 IN CCC NO.2468/2022 & 2446/2022 OF THIS HON'BLE COURT
- EXHIBIT P20 TRUE COPY OF THE COMMUNICATION/LETTER NO.F NO.2/13/2017-AB2/290 DATED 25.11.2021 ISSUED BY THE 3RD RESPONDENT TO SRI. N.K. PRABHAKAR NAICK
- EXHIBIT P21 TRUE COPY OF THE NOTICE NO.32071574924/2005-06 TO 2010-11 DATED 10.5.2023 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P22 TRUE COPY OF THE LETTER DATED 21.7.2023 FILED BEFORE THE 3RD RESPONDENT ALONG WITH ACKNOWLEDGEMENT