



2023:KER:76570

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**

**WEDNESDAY, THE 22<sup>ND</sup> DAY OF NOVEMBER 2023 / 1ST AGRAHAYANA, 1945**

**WP(C) NO. 3050 OF 2022**

**PETITIONER/S:**

M/S HINDUSTAN COCA-COLA BEVERAGES PVT LTD.,  
REGD. OFFICE AT UNITS NOS.303 AND 304, 3RD FLOOR, BAANI  
ADDRESS ONE, GOLF COURSE ROAD, SECTOR-56, GURUGRAM-  
122011, HARYANA AND OFFICE IN KERALA AT NEAR CENTRAL  
WARE HOUSING CORPORATION, POOKKATTUPADY ROAD, EDATHALA  
PANCHAYATH, ERNAKULAM-683561, REPRESENTED BY ITS  
AUTHORISED SIGNATORY MR. SANISH JOHN.

M/S

BY ADVS.

A.KUMAR

P.J.ANILKUMAR

JOB ABRAHAM

AJAY V.ANAND

**RESPONDENTS:**

- 1 COMMISSIONER OF STATE TAX,  
STATE GOODS AND SERVICES TAX DEPARTMENT,  
THIRUVANANTHAPURAM-695001.
- 2 JOINT COMMISSIONER OF STATE TAX,  
STATE GOODS AND SERVICES TAX DEPARTMENT, SPECIAL  
CIRCLE, PALAKKAD-678001.
- 3 DEPUTY COMMISSIONER OF STATE TAX,  
OFFICE OF THE JOINT COMMISSIONER OF STATE TAX, STATE  
GOODS AND SERVICES TAX DEPARTMENT, PALAKKAD-678001.
- 4 FAST TRACK TEAM,  
STATE GOODS AND SERVICES TAX DEPARTMENT, PALAKKAD-  
678001.

BY ADV PUBLIC PROSECUTOR

RESHMITA RAMACHANDRAN -GP

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



## **JUDGMENT**

**Dated this the 22<sup>nd</sup> day of November, 2023**

The present writ petition has been filed under Article 226 of the Constitution of India impugning Ext.P8 notice dated 12.01.2022 issued by the Deputy Commissioner of the State Tax, State GST Department, Kerala, Special Circle Palakkad, proposing taxable turnover at Rs.15,92,00,540/- for the purposes of GST.

2. The assessment order was completed in respect of the financial year 2004-05 under Section 17(D) of the Kerala General Sales Tax Act, 1963 (KGST Act). The said assessment order passed under Section 17(D) of the KGST Act came to be challenged by the petitioner by filing W.P.(C.) No. 35601/2009. The learned Single Judge of this Court allowed the writ petition and remanded the matter back to the assessing authority for a fresh order. Paragraph Nos.2 and 3 of the judgment dated 14.12.2009 passed in W.P.(C.) No. 35601/2009 would read as under;

*"2. In view of the directions contained in the Division Bench Judgment cited supra (Hindustan Petroleum Corporation Ltd. V. Assistant Commissioner and other: Writ*



*Appeal No.1714/2009 and connected cases Jt.dt:8/10/2009), I am of the opinion that the impugned assessment in this writ petition is not sustainable and hence matter needs fresh disposal by the authority concerned.*

*3. Therefore, the writ petition is allowed quashing the impugned assessment finalised under section 17 D and also the consequential demand raised if any for realisation of amounts covered under such assessment. The respondent concerned, (The Fast Track Team) is directed to take fresh steps necessary for completing assessment taking into consideration of the directions contained in the Division Bench judgment. The fresh assessment as directed above shall be completed as early as possible, at any rate within a period of two months from the date of receipt of the copy of this judgment, after affording adequate opportunities to the petitioner as directed in the decision cited above."*

3. After the aforesaid judgment came to be passed and the original assessment order was set aside and the matter was remanded back. Vide order dated 24.11.2021, a fast track team was constituted to complete the assessment in respect of the petitioner for the financial year 2004-05 under Section 17(D) of the Kerala General Sales Tax Act, 1963. After the fast track team was constituted, the Deputy Commissioner was directed to take steps for re-doing the assessment under Section 17(D) of the KGST Act, in respect



of the same. Ext.P4 notice dated 02.12.2021 came to be issued to the petitioner to examine the accounts, documents and registers for the year 2004-05 and the petitioner was directed to produce those documents on 16.12.2021. The petitioner filed a reply to the said notice dated 16.12.2021. The petitioner took a plea in his reply that financial year 2004-05, the original assessment order was set aside by the High Court vide judgment dated 14.12.2009 passed in W.P(C.) No. 35601/2009. By the said judgment, time frame of two months time was granted for redoing the assessment. Almost 12 years had elapsed since the order passed by the High Court and therefore, the petitioner was not in possession of the records as sought for and they were unable to make available the records as per the notice dated 02.12.2021. It was also said that calling for the records after statutory period of assessment was not in accordance with law and request was made to drop the proceedings for redoing the assessment. The said reply was considered and fresh notice dated 20.12.2021 was issued to the petitioner in Ext.P6. It was said that since the original assessment was already completed, which was set aside by



the High Court and the matter was remanded back therefore, the time bar limit for completing the assessment was not available and there was no scope for jurisdictional objection. The petitioner was again asked for to produce documents failing which the assessment will be completed on available documents. The petitioner was given an opportunity of being heard on 12.01.2022 at 11.00 AM. On receipt of the said notice the petitioner again raised the same objection. It was said that no notice could have been issued after the period of assessment. The time period under Section 25 should apply for a revised assessment. It was further said that the High Court had issued a direction for completion of assessment proceedings within a period of two months. It is also stated that the records relating to the assessment year 2004-05 were not available and the office was also shifted in the mean time for several times. Considering the said stand of the petitioner, Ext.P8 order came to be passed as mentioned above.

4. The petitioner has filed the present writ petition impugning Ext.P8 order. This Court, vide interim order dated 28.01.2022, proceedings pursuant to Ext.P8 order



shall not be finalised without getting further orders from the Court. The petitioner was directed to appear on 03.02.2022 before the 4<sup>th</sup> respondent.

5. Sri.A.Kumar, learned counsel for the petitioner submits that it was the High Court that fixed the time limit for finalising of redoing the assessment, issuing notice after 12 years from the date of the order is against the time prescribed under Section 17D of KGST Act. It is further submitted that though it was not original assessment but the revised assessment ought to have been completed within 5 years from the end of the financial year or at least from the date of the judgment passed by the high Court in in W.P(C.) No. 35601/2009. He therefore submits that the issuing of the notices for redoing the assessment in respect of the financial year 2004-05 after 12 years is against the law and liable to be set aside. Learned counsel for the petitioner has placed reliance on two judgments of this Court. i.e, ***K.Sasilal v.Fast Track Assessment Team No.2 and others*** in W.P(C.) No.6857/2020 and ***Iswara Bhat v. CAIT*** [1192 KHC 110].



6. Ms. Reshmitha Ramachandran, learned Government Pleader however submits that the limitation prescribed for completion of original assessment or revised assessment would not be applicable in the facts of the present case inasmuch as the high Court had set aside the original assessment and remanded the matter back to the assessment authority to redo the assessment. Therefore, the limitation prescribed for passing the original assessment or the revised assessment could not be applicable. In the present case, it is on demand by the high Court the notices had been issued to the petitioner for completing the assessment proceedings.

7. I have considered the submissions, this Court vide judgment dated 14.12.2009 passed in W.P(C.) No. 35601/2009, had remanded the matter back to the assessing authority to pass a fresh assessment order within a period of two months from the date of receipt of the copy of the judgment. It is not known from the fact that when the petitioner had supplied the copy of the judgment dated 14.12.2009. The said judgment dated 14.12.2009, it was for the petitioner to supply copy of the judgment.



8. I am of the view that the limitation prescribed for passing the assessment/revised assessment would not be applicable to the facts of the present case inasmuch as the high Court had set aside the original assessment and remanded the matter back to assessing authority to redo the assessment. Therefore, the proposed assessment is neither the original assessment nor the revised assessment and the limitation prescribed for assessment and revised assessment would not be applicable to the facts of the case. The question whether on remand also the limitation period prescribed for revised assessment would be applicable does not call for consideration in the facts of the present case inasmuch as it is not known that when the petitioner had supplied the copy of the judgment passed by the high Court before the assessing authority. The final order yet to be passed in pursuance to the proposed assessment in Ext.P8. This Court had directed the petitioner to file reply to Ext.P8 proposed assessment order and the petitioner has not filed the reply.

Therefore, I do not find any substance to interfere in this writ petition at this stage. Thus, the writ petition is



dismissed. However, the petitioner is granted liberty to appear before the Deputy Commissioner of the State Tax, State GST Department, Kerala, Special Circle palakkad and may inspect the records and file the reply if any, within a period of three weeks from today. In case, the petitioner fails to file reply, the assessing authority shall proceed and pass appropriate orders in accordance with law. If the petitioner appears, the petitioner should be given an opportunity of hearing before passing a final order.

Sd/-

**DINESH KUMAR SINGH**  
**JUDGE**

AP



**APPENDIX OF WP(C) 3050/2022**

PETITIONER EXHIBITS

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|------------|--|
| Exhibit P1 | TRUE COPY OF THE JUDGMENT IN WRIT PETITION NO.35601/2009 DATED 14.12.2009. |
| Exhibit P2 | TRUE COPY OF THE ORDER DATED 24.11.2021.                                   |
| Exhibit P3 | TRUE COPY OF THE COMMUNICATION DATED 30.11.2021.                           |
| Exhibit P4 | TRUE COPY OF THE COMMUNICATION DATED 2.12.2021.                            |
| Exhibit P5 | TRUE COPY OF THE REPLY DATED 16.12.2021.                                   |
| Exhibit P6 | TRUE COPY OF THE NOTICE DATED 20.12.2021.                                  |
| Exhibit P7 | TRUE COPY OF THE REPLY DATED 12.1.2022.                                    |
| Exhibit P8 | TRUE COPY OF THE PRE ASSESSMENT NOTICE DATED 12.1.2022.                    |