



2023:KER:77867

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 4TH DAY OF DECEMBER 2023 / 13TH AGRAHAYANA, 1945

WP(C) NO. 40278 OF 2023

PETITIONER/S:

ABRAHAM VARGHESE
AGED 62 YEARS
S/O (LATE) K V VARKEY PROPRIETOR, M/S. RONY TIMBERS,
POOZHICKADU, PANDALAM, PATHANAMTHITTA, PIN - 689512
BY ADVS.
ASWIN GOPAKUMAR
ANWIN GOPAKUMAR
ADITYA VENUGOPALAN
MAHESH CHANDRAN
SARANYA BABU
NIKITHA SUSAN PAULSON
SHALLET K. SAM

RESPONDENT/S:

- 1 THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL
JAWAHAR NAGAR, SASTHAMANGALAM, THIRUVANANTHAPURAM-
REPRESENTED BY ITS SECRETARY, PIN - 695010
- 2 THE DEPUTY COMMISSIONER (APPEALS) - II
STATE GOODS AND SERVICES TAX DEPARTMENT, ADOOR,
PATHANAMTHITTA, PIN - 689645
- 3 THE ASSISTANT COMMISSIONER
STATE GOODS AND SERVICES TAX DEPARTMENT, ADOOR,
PATHANAMTHITTA, PIN - 689645
- 4 STATE TAX OFFICER (ARREARS RECOVERY)
STATE GOODS AND SERVICES TAX DEPARTMENT,
PATHANAMTHITTA, PIN - 689101

OTHER PRESENT:

ADV.RESHMITA RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****Dated this the 4th day of December, 2023**

1.The present writ petition has been filed with the following prayers:-

(i). Issue a writ of mandamus or any other appropriate writ, direction or order and direct Respondent No. 1 to consider and pass appropriate orders on Exhibit P7 application within a time limit as may be fixed by this Hon'ble Court;

(ii) Issue a writ of mandamus or any other appropriate writ, order, or direction commanding Respondent No. 2 to 4 to keep in abeyance enforcement of Exhibit P3 order pending consideration of Exhibit P6 appeal;

(iii) To allow this Writ Petition (Civil) with cost to the Petitioner

2. The petitioner, a dealer under the provisions of Kerala Value Added Tax Act, 2003 ('the KVAT Act' for short) filed returns for the assessment year 2009-2010, declaring a total sales turnover of Rs.1,24,14,283/-.

3. The commercial tax officer issued a show cause notice to the petitioner in respect of the returns filed by him and also issued an order dated 26.11.2014, rejecting the arguments advanced by the petitioner and thereby raising a total demand of Rs.14,72,170/- including an interest for Rs.5,28,471/-.

4. The petitioner filed an appeal against the said assessment order (Ext.P1) before the 2nd respondent. The first appellate authority partly allowed the appeal and remanded the matter back to the assessing authority to modify the assessment order, effecting the modification as found by the first appellate authority. It is submitted



that the petitioner instead of participating in the proceedings before the assessing authority on remand filed an appeal before the first respondent. Admittedly, there is a delay of 450 days. However, the petitioner has approached this Court with this writ petition along with the prayers as mentioned above.

This Court does not find any ground to direct the Tribunal to expedite the appeal proceedings pending before the State. The petitioner was not in a hurry to approach the Tribunal and it has filed the appeal with more than 400 days delay. The Tribunal is directed to take decision on the application for condoning the delay in filing the appeal within a period of two months and if the delay is condoned, the Tribunal may proceed to hear and pass an appropriate order on an application of stay as well as the appeal.

The writ petition is disposed of as above.

Sd/-
DINESH KUMAR SINGH
JUDGE



APPENDIX OF WP(C) 40278/2023

PETITIONER EXHIBITS

- Exhibit P1** A TRUE COPY OF THE ORDER PASSED BY THE COMMERCIAL TAX OFFICER, ADOOR DATED 26.11.2014
- Exhibit P2** A TRUE COPY OF THE ORDER NO. KVATA (PTA) 81/15 PASSED BY RESPONDENT NO.2 DATED 18.07.2019
- Exhibit P3** A TRUE COPY OF THE MODIFIED ORDER NO.32030324065/2009-10(A) DATED 27.01.2020 ISSUED BY RESPONDENT NO.2
- Exhibit P4** A TRUE COPY OF THE NOTICE NO. 32030324065 DATED 21.09.2023 ISSUED BY RESPONDENT NO.4
- Exhibit P5** A TRUE COPY OF THE NOTICE DATED 26.10.2023 ISSUED BY RESPONDENT NO.3
- Exhibit P6** A TRUE COPY OF THE STATUTORY APPEAL PREFERRED BY THE PETITIONER DATED 17.11.2023
- Exhibit P7** A TRUE COPY OF THE APPLICATION FOR STAY PREFERRED BY THE PETITIONER ALONG WITH THE STATUTORY APPEAL DATED 17.11.2023
- Exhibit P8** A TRUE COPY OF THE APPLICATION FOR CONDONATION OF DELAY IN FILING THE APPEAL