

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 17TH DAY OF AUGUST 2020 / 26TH SRAVANA, 1942

WP(C).No.14376 OF 2020(V)

PETITIONER/S:

PEE BEE ENTERPRISES
41/1472, KRISHNASWAMI ROAD, ERNAKULAM 682 307
REPRESENTED BY ITS MANAGING PARTNER DINU
CHANDRASEKHARAN

BY ADV. SRI.RAJESH NAMBIAR

RESPONDENT/S:

1 ASSISTANT COMMISSIONER
O/O THE ASSISTANT COMMISSIONER-2
SPECIAL CIRCLE 2,
STATE GOODS AND SERVICE TAX DEPARTMENT, SGST COMPLEX,
PERUMANOOR P.O, ERNAKULAM 682 015

2 THE COMMISSIONER,
STATE GOODS AND SERVICE TAX DEPARTMENT,
THIRUVANANTHAPURAM 695 001

R1 BY GOVERNMENT PLEADER

OTHER PRESENT:

GP DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court aggrieved by Exts.P1 and P2 assessment orders and Exts.P8 and P9 consequential demand notices issued him under the GST Act. In the writ petition it is the case of the petitioner that the assessments pertaining to the months April and May 2019 were completed under Section 62 of the SGST Act on best judgment basis, taking note of the non filing of returns by the petitioner assessee for the said month. While the assessment orders are dated 20.8.2019, it is the case of the petitioner that these orders were not served on him till much later and within 30 days after the from the date of receipt of the orders, he filed the returns as permitted under Section 62 of the SGST Act. He contends, therefore, that the assessment orders have to be treated as withdrawn by virtue of the provisions of Section 62 of the Act.

2. through a statement filed by the 1st respondent pursuant to a direction from this Court, it is stated as follows in Paragraphs 8 to 12:-

“8. The assessment order in ASMT.13 dated 20.8.2019 has been issued by utilizing the option available with the common Portal. While issuing the ASMT. 13. the copy of the ASMT.I3 is emailed to the registered email id of the taxable person at once. Her actual issuance of ASMT.13 is 20.8.2019 itself, but the petitioner filed the returns for the period April and May 2019 in GSTR.3B only on 30.10.2019 ie., with a delay of 71 days. Since the filing is not within 30 days. ASMT.13 cannot be withdrawn and the petitioner is liable to pay the amount as per ASMT. 13 and that was followed with a demand notice in DRC.07. It is submitted that the petitioner has not produced the copy of the order in ASMT-13 dated 20.8.2019 received on 20.08.2019 through common portal for verification of this Honourable Court, instead produced the copy of the order taken from the portal attached with the demand notice in DRC.07

by the subsequent officer for further perusal of the petitioner.

9.The above ASMT.13 dated 20.08.2019 was issued by Since the proper officer Sri.K.Binil. Assistant Commissioner. petitioner has not filed the returns within 30 days of assessment order (returns have to be filed on or before 18.09.2019), the taxable person has a liability to pay the demands raised as assessment order. Subsequently, the copy of the above order. signed by Sri.K.Binil, Assistant Commissioner was despatched to the petitioner and which was seen acknowledged by him on 30.09.2019as admitted by the petitioner. Without prejudice to the above contentions, if it is taken that the despatch date alone is to be considered, even then it can be found that there is a delay of one day in filing of return Postal acknowledgment is on 30.09.2019, and filing of return is only on 30.10.2019.

10.Since the petitioner did not file returns within 30 days of Assessment order, the then proper officer who had taken over the charge, Smt.Jhancy C.J. issued demand notice in DRC.07. Along with the DRC.07, she generated the ASMT.13 again to issue along with the DRC.07. Then date of order 20.08.2019 has not changed but only the name of Proper officer, Smt.Jhancy was reflected,It is a fact that the ASMT.13 already sent through email on 20.08.2019 itself, and for abundant caution its manual copy also served and acknowledged by the petitioner on 30.09.2019.

11. A Copy of the computer screen shot of the petitioner reflecting the date of Notice and date of order relating to the petitioner is produced herewith and may be marked as AnnexureR1(a).

12.A true copy of the postal acknowledgment dated 30.09.2019 by the petitioner regarding the assessment order dated 20.08.2019 issued by the 1st respondent is produced herewith and may be markedasAnnexureR1(b).”

3. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find from a reading of the statement of the respondent that the assessment orders dated 20.8.2019 were served on the petitioner through publication on the web portal on 20.8.2019 itself. Over and above that, an email was also sent to the petitioner at his registered email id, although the petitioner says that he did not receive the email but received only a copy of the or through registered post much later. I find however, that the service of an order through the web portal is one of the methods of service statutorily prescribed under Section 161(1)(c) and (d) of the SGST Act. If that be so, then the petitioner cannot deny the fact of receipt of the order on 28.9.2019 for the purposes of filing the returns as contemplated under Section 62 of the SGST Act with a view to getting the assessment order withdrawn. In as much as the return filed by the petitioner for the period April and May 2019 was only on 30.10.2019,ie., 71 days after the date of service of the assessment order through the web portal (20.8.2019), the petitioner cannot aspire to get the benefit of withdrawal o f the assessment orders contemplated under Section 62 of the SGST Act. The assessment orders would therefore have to be held valid and the remedy of the petitioner against the said assessment order can only be through an appeal before the appellate authority under the Act.

Taking note of the submission of the learned counsel for the petitioner

that he would require some time to move the appellate authority, I direct that the recovery steps for recovery of amounts confirmed against the petitioner by Exts.P1 and P2 assessment orders and Exts. P8 and P9 demand notices shall be kept in abeyance for a period of one month so as to enable the petitioner to move the appellate authority in the meanwhile and obtain orders of stay in the stay application filed along with the appeal. If the petitioner files the appeal within a period of two weeks from the date of receipt of a copy of this judgment, then the appellate authority shall treat the appeals as filed within time, and proceed to consider the stay applications preferred by the petitioner on merits after hearing the petitioner. The petitioner shall produce a copy of the writ petition together with a copy of this judgment, before the respondents, for further action.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

SJ

APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | TRUE COPY OF THE ASSESSMENT ORDER DATED 20-08-2019 FOR THE PERIOD APRIL 2019 |
| EXHIBIT P2 | TRUE COPY OF THE ASSESSMENT ORDER DATED 20-08-2019 FOR THE PERIOD MAY 2019 |
| EXHIBIT P3 | TRUE COPY OF THE NOTICE U/S 46 DATED 14-07-2019 FOR THE PERIOD APRIL 2019 |
| EXHIBIT P4 | TRUE COPY OF THE NOTICE U/S. 46 DATED 14-07-2019 FOR THE PERIOD MAY 2019 |
| EXHIBIT P5 | TRUE COPY OF THE GSTR 3B RETURN FOR THE PERIOD APRIL 2019 |
| EXHIBIT P6 | TRUE COPY OF THE GSTR 3B RETURNS FOR THE PERIOD MAY 2019 |
| EXHIBIT P7 | TRUE COPY OF THE ONLINE TRACK RETURN STATUS |
| EXHIBIT P8 | TRUE COPY OF THE DEMAND NOTICES IN FORM GST DRC-07 FOR THE PEREIOD APRIL 2019 |
| EXHIBIT P9 | TRUE COPIES OF THE DEMAND NOTICES IN FORM GST DRC 07 FOR THE PERIOD MAY 2019 |
| EXHIBIT P10 | TRUE COPY OF THE DRAFT ANNUAL RETURN FOR THE PREVIOUS YEAR 2018-19 |
| EXHIBIT P11 | TRUE COPY OF THE GSTR2A DETAILS FOR THE MONTH OF APRIL 2019 |
| EXHIBIT P11 A | TRUE COPY OF THE GSTR2A details for the month of may 2019 |