IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 30TH DAY OF JULY 2020 / 8TH SRAVANA, 1942

WP(C).No.2757 OF 2020(T)

PETITIONER/S:

AMANI MACHINE CENTRE
19/383,D,E,G,G,J,K,AL-NOON BUILDING,NH
BYPASS,VATAKARA,KERALA-673101,REPRESENTED BY ITS
MANAGING PARTNER BAIJU.K.

BY ADV. SRI.DHEERAJ KRISHNAN PEROT

RESPONDENT/S:

THE STATE TAX OFFICER
STATE GOODS AND SERVICE TAX DEPARTMENT,
VADAKARA-673101.

OTHER PRESENT:

GP: THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## JUDGMENT

The petitioner has approached this Court aggrieved by Exts.P12 to 22 assessment orders passed under Section 62 of the Goods and Services Tax Act('the Act' for short). In the writ petition, it is his case that after receipt of the said assessment order, he submitted the relevant returns viz. Exts.P23 to P33, on various date between November and December 2019. It is admitted though, that the returns were not filed within 30 days from the date of service of the assessment orders under Section 62 and, therefore, the petitioner will not get the benefit contemplated under Section 62(2) whereby the said orders would have been deemed withdrawn save for the payment of interest or payment of late fee under Section 47. The learned counsel for the petitioner would, however, contend that, in as much as the provisions of Section 62(1) make a reference to Section 44 of the Act, which deals with the furnishing of annual returns, and enables the assessing authority under Section 62 of the Act, to pass assessment orders on best judgment basis within a period of five years from the date specified under Section 44 for furnishing of annual returns, the best judgment assessment itself could have been completed only after December of the financial year, which is the period mentioned in Section 44 of the CGST Act. The contention, in other words, is that in as much as the petitioner has a period till 31st of December, following the end of the financial year, for preferring the annual returns, the said period must also been seen as the date from which alone the respondents could proceed to complete the best judgment assessment, under Section 62 of the Act.

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

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find it difficult to accept the proposition canvassed by the learned counsel for the petitioner, with reference to Section 62 r/w Section 44 of the Act. In my view, the reference to Section 44 of the Act, in Section 62, is only for the purpose of determining the five year period within which the assessing officer has to complete the best judgment assessment. It does not, in my view, mandate that the steps for completing the best judgment assessment should be initiated only after 31st December, following the end of the financial year, in which the default as regards filing of monthly returns occured. In other words, Section 62 of the Act must be seen as enabling an Assessing Officer to proceed to assess the tax liability of a person, who has not furnished the returns *inter alia* under Section 39, even after service of notice under Section 46, on best judgment basis, and thereafter issue the assessment order within a period of five years from the date indicated under Section 44 for furnishing of the annual returns. Hence, while the best judgment assessment can be done immediately after detection of the failure to file the returns despite service of notice, the outer time limit for completing the best judgment assessment is five years from the date specified under Section 44 of the Act. The time limit of five years indicated in S. 62 (i) has to be seen as the outer limit prescribed by the statute for the exercise of power by the assessing authority, and not as indicative of any particular point in time from when, after detection of the default committed by the assessee, the assessing authority can proceed to complete the assessment on best judgment basis.

In the instant case, it is not in dispute that the petitioner did not furnish a valid return within 30 days from the service of the assessment orders under Section 62(1) of the Act. That being the case, it would follow that the petitioner cannot obtain the benefit under Section 62(2) of the Act, for deeming the assessment orders already passed on best judgment basis as withdrawn. The writ petition in its challenge to the assessment orders therefore fails and is dismissed.

Taking note of the submission of the learned counsel for the petitioner that he would require some time to prefer the appeals against the assessment orders in question, I direct that recovery proceedings for recovery of the amounts confirmed against the petitioner by Exts.P12 to P23 assessment orders shall be kept in abeyance for a period of six weeks so as to enable the petitioner to move the Appellate Authority, in its challenge against the said assessment orders, in the meanwhile. The petitioner shall produce a copy of the writ petition together with a copy of this judgment, before 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 EMAIL COMMUNICATION DATED 22.11.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190019351 FOR A DEMAND OF RS.4,65,366/-FOR THE MONTH OF AUGUST 2018. |
| EXHIBIT P2 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 22.11.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190019371 FOR A DEMAND OF RS.4,62,424/-FOR THE MONTH OF SEPTEMBER 2018. |
| EXHIBIT P3 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 22.11.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190019391 FOR A DEMAND OF RS.4,57,324/-FOR THE MONTH OF 0CTOBER 2018. |
| EXHIBIT P4 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 26.11.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190019401 FOR A DEMAND OF RS.4,51,440/-FOR THE MONTH OF NOVEMBER 2018. |
| EXHIBIT P5 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 29.11.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190019431 FOR A DEMAND OF RS.4,45,360/-FOR THE MONTH OF DECEMBER 2018. |
| EXHIBIT P6 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 26.12.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190019461 FOR A DEMAND OF RS.4,91,454/-FOR THE MONTH OF JANUARY 2019. |
| EXHIBIT P7 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 26.12.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190019491 FOR A DEMAND OF RS.5,25,390/-FOR THE MONTH OF FEBRUARY 2019. |

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| EXHIBIT P8 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 26.12.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190019521 FOR A DEMAND OF RS.4,47,460/-FOR THE MONTH OF MARCH 2019. |
| EXHIBIT P9 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 26.12.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190022031 FOR A DEMAND OF RS.4,22,414/-FOR THE MONTH OF APRIL 2019. |
| EXHIBIT P10 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 26.12.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190022151 FOR A DEMAND OF RS.4,16,334/-FOR THE MONTH OF MAY 2019. |
| EXHIBIT P11 | TRUE COPY OF THE EMAIL COMMUNICATION DATED 26.12.2019 WHERE THE PETITIONER IS ASSESSED UNDER SECTION ASMT 13 AS PER ORDER NO.ZJ3209190022191 FOR A DEMAND OF RS.4,10,450/-FOR THE MONTH OF JUNE 2019. |
| EXHIBIT P12 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 20.9.2019 FOR THE MONTH OF AUGUST 2018. |
| EXHIBIT P13 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 20.9.2019 FOR THE MONTH OF SEPTEMBER 2018. |
| EXHIBIT P14 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 20.9.2019 FOR THE MONTH OF 0CTOBER 2018. |
| EXHIBIT P15 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 20.9.2019 FOR THE MONTH OF NOVEMBER 2018. |
| EXHIBIT P16 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 20.9.2019 FOR THE MONTH OF DECEMBER 2018. |
| EXHIBIT P17 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT |

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| | DATED 20.9.2019 FOR THE MONTH OF JANUARY 2019. |
| EXHIBIT P18 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 20.9.2019 FOR THE MONTH OF FEBRUARY 2019. |
| EXHIBIT P19 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 20.9.2019 FOR THE MONTH OF MARCH 2018. |
| EXHIBIT P20 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 23.9.2019 FOR THE MONTH OF APRIL 2019. |
| EXHIBIT P21 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 23.9.2019 FOR THE MONTH OF MAY 2019. |
| EXHIBIT P22 | TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASTM-13 UNDER SECTION 62 OF THE ACT DATED 20.9.2019 FOR THE MONTH OF JUNE 2019. |
| EXHIBIT P23 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH FOR THE AMOUNT OF AUGUST -2018 DATED 28.11.2019 |
| EXHIBIT P24 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF SEPTEMBER-2018 DATED 22.12.2019 |
| EXHIBIT P25 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF OCTOBER -2018 DATED 05.12.2019 |
| EXHIBIT P26 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF NOVEMBER-2018 DATED 05.12.2019 |
| EXHIBIT P27 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF DECEMBER-2018 DATED 05.12.2019 |
| EXHIBIT P28 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF JANUARY -2019 DATED 05.12.2019 |
| EXHIBIT P29 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF FEBRUARY-2019 DATED 05.12.2019 |
| EXHIBIT P30 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF MARCH-2019 DATED 05.12.2019 |

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| EXHIBIT P31 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF APRIL-2019 DATED 05.12.2019 |
| EXHIBIT P32 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF MAY-2019 DATED 05.12.2019 |
| EXHIBIT P33 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF MAY-2019 DATED 09.12.2019 |
| EXHIBIT P34 | TRUE COPY OF THE GSTR-3B RETURN MADE FOR THE MONTH OF JUNE -2019 DATED 09.12.2019 |
| EXHIBIT P35 | TRUE COPY OF THE REPLY FROM THE ADDTITIONAL 2ND RESPONDENT DATED 03.02.2020 |