IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 17TH DAY OF JULY 2020 / 26TH ASHADHA, 1942

WP(C).No.13140 OF 2020(N)

PETITIONER/S:

SILPA PROJECTS AND INFRASTRUCTURE (I) PVT. LTD.
3RD FLOOR, NORTH AVENUE, PARAMARA ROAD
KOCHI 682 018. REPRESENTED BY ITS MANAGING DIRECTOR
MR. T.S. SANIL.

BY ADVS.
A.KUMAR
SHRI.JOB ABRAHAM
SRI.AJAY V.ANAND

RESPONDENT/S:

1 THE PRINCIPAL COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, OFFICE OF THE PRINCIPAL COMMISSIONER, CENTRAL REVENUE BUILDING, I.S. PRESS ROAD, KOCHI 682 018.

2 SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE, OFFICE OF SUPERINTENDENT OF CENTRAL TX, AND CENTRAL EXCISE, RANGE 5 ERNAKULAM, KATHRIKADAVU KOCHI 682 017.

R1-R2 BY SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE & CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a private limited company, engaged in construction of commercial/residential buildings, has approached this Court seeking a direction to the respondents to accept Ext.P1 return preferred by the petitioner in manual form. The averments in the writ petition would indicate that the petitioner intends to avail the benefit of the 'Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019' where a distinction is made between persons, who have filed returns showing the extent of tax payable by them, and those persons who have not filed any return disclosing the tax payable by them. It is admitted by the petitioner that, within the period mentioned in the statute for submission of half yearly returns, the returns were not filed by the petitioner. However, he seeks to file the returns belatedly in manual form so as to get the benefits applicable to persons who had filed returns, under the 'Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019' mentioned above. It is his case that when he approached the respondent with the belated returns in manual form, the respondents refused to accept the same and it is, therefore, that he has approached this Court through the present writ petition.

2. I have heard Sri.A.Kumar, the learned counsel for the petitioner and Sri.Sreelal N. Warrier, the learned Standing Counsel for the respondent.

3. Sri.A.Kumar would refer to Section 70 of the Finance Act, 1994 as amended, as also to Rule 7 of the Service Tax Rules, 1994, to point out that prior to 01.10.2011, when Sub Rule (3) was introduced to Rule 7 of the Service Tax

Rules, the half yearly return that had to be filed by an assessee could be filed in manual form. By the amendment introduced with effect from 01.10.2011, it was made clear that the assessee shall submit the half yearly return electronically. According to Sri.A.Kumar, the introduction of Sub Rule (3) to Rule 7 does not in any way affect the independent operation of Sub Rule (1) of Rule 7, which enabled an assessee to file returns manually. Per contra, it is the submission of the learned Standing Counsel for the respondent that Sub Rule (3) of Rule 7 only clarified that for the purposes of Rule 7, the half yearly return that is contemplated under Sub Rule(1) had to be submitted electronically after 01.10.2011. He also submits that the petitioner has not even approached the respondent with any manual returns, as alleged.

4. On a consideration of the rival submissions, I find force in the contention of the learned counsel for the respondents that Sub Rule (3) of Rule 7 only qualifies Sub Rule (1) of Rule 7. In my view, while Sub Rule (1) of Rule 7 specifies <u>the form</u> that has to be used while filing the half yearly returns, Sub Rule(3) clarifies <u>the manner</u> in which the half yearly returns have to be filed by an assessee after 01.10.2011. When so read harmoniously, it would follow that the half yearly return that has to be submitted in the particular form mentioned in Sub Rule (1) had necessarily to be submitted electronically with effect from 01.10.2011. In the instant case, the petitioner not having filed the returns in electronic form within the period specified in the statute, cannot now be heard to contend that he can file the return in manual form for the purposes of obtaining the benefit applicable to the said category of persons, under the 'Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019'

In the result, I find that the prayers sought for in the writ petition cannot be granted. The writ petition, therefore, fails and is accordingly dismissed.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

sd

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF ST 3 RETURNS FOR PERIOD APRIL 2017- JUNE 2017 DATED 31.08.2018.**
EXHIBIT P2	**TRUE COPY OF THE EMAIL DATED 23.10.2019.**
EXHIBIT P3	**TRUE COPY OF THE EMAIL DATED 13.01.2020.**