

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

TUESDAY, THE 16TH DAY OF JUNE 2020 / 26TH JYAISHTA, 1942

WP(C).No.11830 OF 2020(C)

PETITIONER/S:

THE THADUKKASSERY SERVICE CO OPERATIVE BANK LTD.NO.F
534,
KERALASSERY P.O., KONGAD, PALAKKAD-678641,
REPRESENTED BY ITS SECRETARY, VIJAYAKUMARI M.P., AGED
51, D/O.NARAYANAN NAIR.

BY ADV. SRI.HARISANKAR V. MENON

RESPONDENT/S:

- 1 THE STATE TAX OFFICER
STATE GOODS AND SERVICE TAX DEPARTMENT, 1ST CIRCLE,
PALAKKAD-678001.
- 2 THE SUPERINTENDENT,
GOODS AND SERVICE TAX DEPARTMENT, PALAKKAD-678001.
- 3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 4 UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF CORPORATE
AFFAIRS, NEW DELHI-110001.
- 5 GOODS AND SERVICES TAX NETWORK,
EAST WING, 4TH FLOOR, WORLD MARK-1, AEROCITY, NEW
DELHI-110037.

OTHER PRESENT:

SRI P VIJAYAKUMAR ASGI DR THUSHARA JAMES GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 16th day of June 2020

Petitioner, Society through the instant writ petition has approached this Court with the following prayers:

“(i) To quash Exts.P4 to P4(za) orders issued by the 1st respondent by the issue of a writ of certiorari or such other writ or order or direction.

(ii) To direct the respondents to grant validity for Ext.P2 registration from 01.07.2017 by the issue of a writ of mandamus or such other writ or order or direction.”

2. Prima facie, the orders Exts.P4 to P4(za) are appealable under Section 107 of the Goods and Services Tax Act, 2017. However, Mr. Harisankar V.Menon during the course of the argument pleaded that the order is without jurisdiction and it is on that account extra ordinary writ jurisdiction of this Court has been invoked.

3. The facts culminating into filing of the writ petition are that the petitioner society is an assessee under the Income Tax Act 1961. Inadvertently, the petitioner was granted two permanent account Nos. (PAN) as AAET6828L and AACTT3061G. On realizing the mistake,

the Income Tax Department vide communication dated 13.7.2016, Ext.P1 informed the petitioner that only PAN No.AAEAT6828L will be active and the other PAN No. AACTT3061G would not be operational and accordingly the PAN Number AACTT3061G was deactivated. Petitioner was also holding registration for carrying on the business of a dealer under the erstwhile Kerala Value Added Act from the office of the first respondent and was being filed under the said statute. However upon roll out of GST, the petitioner migrated to the new system. But owing to the inadvertent omission, the migration was carried out by giving the deactivated PAN No. AACTT3061G. On the basis of the aforementioned particulars petitioner was granted registration under the GST Act bearing No.32AACTT3061G2ZR. Realizing the mistake with regard to the registration with deactivated PAN number, the petitioner applied for a fresh registration and was granted registration with effect from 16th February 2018 -32AAEAT6828L1Z5. After having obtained the fresh

registration number, petitioner submitted an application dated 29.9.2018 before the first respondent for cancellation of previous registration No.32AACTT3061G2ZR.

4. Sri.Harisankar Menon, learned counsel appearing on behalf of the petitioner submitted that from the March of 2018 onwards the petitioner had been filing proper returns under the GST Act in pursuance of the new certificate ie., Ext.P2 which was not disputed by the authority. However the first respondent passed separate orders dated 30.09.2019 for the period from July 2017 to October 2019 under Section 62 of the CGST Act demanding Rs.9,99,174/- towards tax and Rs.2,87,728/- towards interest Exts.P4 to P4(za). He submits that the aforementioned orders have been issued only on account of the fact that no returns were filed by the petitioner under the Act with reference to registration No.32AACTT3061G2ZR on the basis of the invalidated PAN Number. The error was neither intentional or willful. In fact, with effect from March 2018, the petitioner has been

filing returns under the new registration so obtained. The factum of the inadvertent mistake was in the knowledge of the first respondent.

5. In support of the aforementioned submissions reliance has been laid to the judgments of this Court in W.P.(C) No.35333 of 2017 dated 6.4.2018 and W.P.(C) No.17323 of 2019 dated 29.11.2019, Exts.P5 and P5(a). It is submitted that human is bound to err. As such, it is obligatory for the respondents concerned to make appropriate provisions to tackle the issues of such nature instead of imposing penalty. It was a case where the petitioner was not able to comply with the statutory requirements in respect of the business for the period from 1.7.2017 to 12.08.2017 owing to the applicability of the new GST regime. In the other matter, it was also similar kind of difficulties faced by the assessee. By concluding his argument, Sri. Harisankar Menon submits that instead of availing the remedy of appeal, the authorities ought to have given an opportunity of hearing to the petitioner to rule out

the element of *mens rea*.

6. Per contra, Dr. Thushara James, learned Government Pleader relied upon the objections taken in the counter by alleging that once the Income Tax Authority vide Ext.P1, ie., way back on 13.7.2016 informed the petitioner with regard to use only the PAN No. AAEAT6828L with a further warning to desist from using other PAN. Despite that, the assessee migrated to the GST regime had been using t PAN No. AACTT3061G even in 2017. The scheme of migration as contemplated from the erstwhile taxation laws to the GST regime was such that every person who had been granted provisional registration should submit an application electronically in Form GST REG-26, duly verified along with the necessary information and documents to obtain the Permanent Registration Number. The assessee obtained GST registration using the active PAN No.AAEAT6828L only on 16.2.2018. The contention of the petitioner that he had applied for fresh registration on 'realizing the mistake immediately' is not

acceptable since on verification of the 2A details auto generated against the GSTIN 32AACTT3061G2ZR, it is evident that the GSTIN was used to effect inward supplies during the period. On verification of some of the sample physical invoice copies in respect of the inward supplied effected by the assessee it was ascertained that the GSTIN quoted therein was also GSTIN 32AACTT3061G2ZR. As per the provisions of Section 29(2)(c) of the GST Act 2017, the assessee was served GST REG-17 (Show Cause Notice for Cancellation of Registration) vide communication dated 29.9.2018 for failure to file returns for a continuous period of six months and an opportunity of being heard was given on 8.10.2018. But no valid explanations nor supporting documents were provided by the assessee. The cancellation of registration of the assessee was with effect from 30.11.2019 and not from 29.9.2018. Assessee had an option to file a valid return within 30 days on the service of the assessment order. Thus for all intends and purposes the alleged quandary expressed in the writ petition cannot

be brought within the ambit of bonafide mistake and thus urges this Court for dismissal of the writ petition.

7. I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the aforementioned contentions. In view of the reply as submitted through contention of the learned Government Pleader, it is evident that the alleged error attributed to the human but not an omission or bonafide. There was a clear cut information from the Income Tax Department to use the one PAN No.AAEAT6828L. Despite that the petitioner had been filing particulars of the invalidated PAN Number on the basis of the Registration Number obtained. The cancellation was with effect from 30th November 2019 and not from 29.9.2018. For all these period, there were no returns, which necessitated the assessing officer to assume the role of best assessment under Section 62 of the Act.

The judgments cited at bar Exts.P5 and P5(a), and finding therein are not in dispute ,as it pertained

difficulties faced by assesses in filing returns on roll out of the new GST Scheme. Instant case is not of such nature where the petitioner, for the sake of repetition, was in 2016 informed with regard to use the PAN No. AAEAT6828L. Thus for all intends and purposes, there cannot be any bonafide omission or mistake. I would not be commenting further as it may not prejudice the right of the petitioner, in case he chooses to prefer an appeal under the GST Act.

For the reason aforementioned, the writ petition is devoid of merits. Accordingly, the writ petition is dismissed.

Sd/-

sab

AMIT RAWAL, JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	COPY OF COMMUNICATION ISSUED BY THE INCOME TAX DEPARTMENT, PALAKKAD DATED 13.07.2016.
EXHIBIT P2	COPY OF CERTIFICATE OF REGISTRATION ISSUED BY THE 2ND RESPONDENT DATED 16.02.2018.
EXHIBIT P3	COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DATED 29.09.2018.
EXHIBIT P4	COPY OF ORDER FOR THE PERIOD JULY 2017 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (A)	COPY OF ORDER FOR THE PERIOD AUGUST 2017 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (B)	COPY OF ORDER FOR THE PERIOD SEPTEMBER 2017 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (C)	COPY OF ORDER FOR THE PERIOD OCTOBER 2017 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (D)	COPY OF ORDER FOR THE PERIOD NOVEMBER 2017 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (E)	COPY OF ORDER FOR THE PERIOD DECEMBER 2017 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (F)	COPY OF ORDER FOR THE PERIOD JANUARY 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.

EXHIBIT P4 (G)	COPY OF ORDER FOR THE PERIOD FEBRUARY 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (H)	COPY OF ORDER FOR THE PERIOD MARCH 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (I)	COPY OF ORDER FOR THE PERIOD APRIL 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (J)	COPY OF ORDER FOR THE PERIOD MAY 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (K)	COPY OF ORDER FOR THE PERIOD JUNE 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (L)	COPY OF ORDER FOR THE PERIOD JULY 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (M)	COPY OF ORDER FOR THE PERIOD AUGUST 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (N)	COPY OF ORDER FOR THE PERIOD SEPTEMBER 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (O)	COPY OF ORDER FOR THE PERIOD OCTOBER 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (P)	COPY OF ORDER FOR THE PERIOD NOVEMBER 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (Q)	COPY OF ORDER FOR THE PERIOD DECEMBER 2018 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (R)	COPY OF ORDER FOR THE PERIOD JANUARY 2019 ISSUED BY THE 1ST RESPONDENT DATED

30.09.2019.

EXHIBIT P4 (S)	COPY OF ORDER FOR THE PERIOD FEBRUARY 2019 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (T)	COPY OF ORDER FOR THE PERIOD MARCH 2019 ISSUED BY THE 1ST RESPONDENT DATED 30.09.2019.
EXHIBIT P4 (U)	COPY OF ORDER FOR THE PERIOD APRIL 2019 ISSUED BY THE 1ST RESPONDENT DATED 05.02.2019.
EXHIBIT P4 (V)	COPY OF ORDER FOR THE PERIOD MAY 2019 ISSUED BY THE 1ST RESPONDENT DATED 13.12.2019.
EXHIBIT P4 (W)	COPY OF ORDER FOR THE PERIOD JUNE 2019 ISSUED BY THE 1ST RESPONDENT DATED 13.12.2019.
EXHIBIT P4 (X)	COPY OF ORDER FOR THE PERIOD JULY 2019 ISSUED BY THE 1ST RESPONDENT DATED 09.01.2020.
EXHIBIT P4 (Y)	COPY OF ORDER FOR THE PERIOD AUGUST 2019 ISSUED BY THE 1ST RESPONDENT DATED 09.01.2020.
EXHIBIT P4 (Z)	COPY OF ORDER FOR THE PERIOD SEPTEMBER 2019 ISSUED BY THE 1ST RESPONDENT DATED 09.01.2020.
EXHIBIT P4 (ZA)	COPY OF ORDER FOR THE PERIOD OCTOBER 2019 ISSUED BY THE 1ST RESPONDENT DATED 09.01.2020.
EXHIBIT P5	COPY OF JUDGMENT IN W.P. (C)NO.35333/2017 OF THIS HON'BLE COURT DATED 06.04.2018.
EXHIBIT P5 (A)	COPY OF JUDGMENT IN W.P(C)NO.17323/2019 OF THIS HON'BLE COURT DATED 29.11.2019.