

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF SEPTEMBER 2019 / 1ST ASWINA, 1941

WP(C).No.25059 OF 2019(F)

PETITIONER:

JS FUSION INDUSTRIES PRIVATE LIMITED
542M 542A, 542B, FOCUS TOWER, PAROLICKAL
JUNCTION, ATHIRAMPUZHA, 686 562, KOTTAYAM,
REPRESENTED BY ITS MANAGING DIRECTOR, JOHN
T.A., S/O. T. ABRAHAM, AGED 51 YEARS.

BY ADVS.

SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

- 1 THE STATE TAX OFFICER
1, SGST DEPARTMENT, MANGARAKALUNGU, PALA ROAD,
ETTUMANOOR 686 631.
- 2 THE COMMISSIONER OF STATE GST
STATE GST DEPARTMENT, TAX TOWERS, KILLIPPALAM,
KARAMAN THIRUVANANTHAPURAM 695 002.

SMT. THUSHARA JAMES;GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23.09.2019, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.25059 OF 2019 (G)

Dated this the 23rd day of September, 2019

J U D G M E N T

The petitioner, who is an assessee under the Goods and Services Tax Act (hereinafter referred to as the 'GST Act') on the rolls of the 1st respondent, defaulted on filing of returns from May 2018 onwards. The grievance in the writ petition is against Ext.P1 series of orders of assessment passed by the 1st respondent under Section 62 of the GST Act, pursuant to a best judgment assessment.

2. In the writ petition, the case of the petitioner is that although there is a provision under the Act for an automatic setting aside of the best judgment assessment in circumstances where the registered dealer furnishes a valid return within 30 days of service of the assessment order, the petitioner sees this provision as futile in his case inasmuch as even if the petitioner were to file the returns within the extended time of 30 days from the date of receipt of the best judgment assessment orders, he would not be in a position to pay the admitted tax liability as reflected from the returns. It is therefore that he prays for a direction to quash Exts.P1 to P1(l) orders issued by the 1st respondent on the ground that

the 1st respondent, while passing the said assessment orders on best judgment basis, did not adhere to the yardsticks indicated in Section 62 for exercise of the power.

3. I have heard the learned counsel for the petitioner and Smt. Thushara James, the learned Government Pleader 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 that as per provisions of Section 62 of the SGST Act, it is only in circumstances where an assessee refuses to furnish the particulars required for an assessment under the Act, through the filing of a return within time that the proper officer has to proceed to finalise the assessment on the best of his judgment, taking into account all relevant material which is available or which he has gathered for the said purpose. Sub section (2) of Section 62 indicates that even after the service of the best judgment assessment order on the assessee, if the assessee furnishes a valid return within 30 days thereafter, the assessment order passed on best judgment basis will be deemed to have been withdrawn save for the continuance of the liability to pay interest for late payment of the tax. Thus, the statutory provisions are clear with regard to the time frame within which the assessee has to file his return and pay tax based on the said returns if he

wants the assessment done on best judgment basis to be cancelled.

5. In the instant case, it is not in dispute that the assessee failed to file the returns within the time normally available under the SGST Act. It is also not in dispute that it was on account of the failure of the assessee to file the returns within time that the proper officer was constrained to complete the assessment on best judgment basis. Although the petitioner has a case that the assessment on best judgment basis was itself done in an arbitrary manner and without adhering to the guidelines indicated in the Section, I find that the statutory provisions enable the assessee, who is aggrieved by the assessment order passed on best judgment basis, to furnish his returns within a further period of 30 days and pay tax thereon on the basis of the return filed by him, and in that event, the order of the proper officer passed on best judgment basis will stand automatically withdrawn.

6. The submission of the learned counsel for the petitioner in the instant case however is that he cannot resort to even this procedure since even if he were to file returns within the period of 30 days specified in Section 62(2) of the SGST Act, he would not be able to pay the admitted tax liability on account of paucity of funds.

7. In my view, the statutory prescription of 30 days from the date

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of receipt of the assessment order passed under sub section (1) of Section 62 has to be strictly construed against an assessee and in favour of the revenue, since this is a provision in a taxing statute that enables an assessee to get an order passed against him on best judgment basis set aside. The provision must be interpreted in the same manner as an exemption provision in a taxing statute.

This Court may not be justified in granting an extension of the period contemplated under sub section (2) of Section 62, so as to enable the assessee to file a return beyond the said period for the purposes of getting the benefit of withdrawal of an assessment order passed on best judgment basis under Section 62(1) of the GST Act. Under such circumstances I find that the prayer sought for in the writ petition cannot be granted. The writ petition therefore fails, and is accordingly dismissed.

SD/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

SJ

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF MAY
2018 DATED 15.5.2019.
- EXHIBIT P1 A COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF JUNE
2018 DATED 15.5.2019.
- EXHIBIT P1 B COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF JULY
2018 DATED 15.5.2019.
- EXHIBIT P1 C COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF AUGUST
2018 DATED 15.5.2019.
- EXHIBIT P1 D COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF
SEPTEMBER 2018 DATED 15.5.2019.
- EXHIBIT P1 E COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF OCTOBER
2018 DATED 15.5.2019.
- EXHIBIT P1 F COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF
NOVEMBER 2018 DATED 15.5.2019.
- EXHIBIT P1 G COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF
DECEMBER 2018 DATED 15.5.2019.
- EXHIBIT P1 H COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF JANUARY
2019 DATED 15.5.2019.

- EXHIBIT P1 I COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF
FEBRUARY 2019 DATED 15.5.2019.
- EXHIBIT P1 J COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF MARCH
2019 DATED 14.7.2019.
- EXHIBIT P1 K COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF APRIL
2019 DATED 14.7.2019.
- EXHIBIT P1 L COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF MAY
2019 DATED 14.7.2019.
- EXHIBIT P2 COPY OF LETTER SUBMITTED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT
DATED 14.8.2019.
- EXHIBIT P3 COPY OF CERTIFICATE WITH ANNEXURES
ISSUED BY THE CHARTERED ACCOUNTANT
2.9.2019.