

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 11TH DAY OF APRIL 2019 / 21ST CHAITHRA, 1941

WP(C).No.7445 of 2019

PETITIONER/S:

M/S.WEST BENGAL LOTTERY STOCKISTS SYNDICATE PRIVATE LIMITED, 15/650, KUNNATHUR MEDU, COIMBATORE MAIN ROAD, PALAKKAD-678013, REPRESENTED BY ITS DIRECTOR, MR.THANGAVEL SENTHIL KUMAR.

BY ADVS.
SRI.A.KUMAR
SMTG.MINI(1748)
SRI.P.J.ANILKUMAR

RESPONDENT/S:

- 1 UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF FINANCE(DEPARTMENT OF REVENUE) NO.137, NORTH BLOCK, NEW DELHI-110001.
- 2 STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 THE COMMISSIONER, STATE GOODS AND SERVICE TAX DEPARTMENT, THIRUVANANTHAPURAM-695001.
- 4 STATE TAX OFFICER, PALAKKAD-678001.

ADDL.R5 THE GOODS AND SERVICE TAX NETWORK PORTAL, A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT, EAST WING, 4TH FLOOR, WORLD MARK - I, AEROCITY, NEW DELHI - 110037, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

(ADDL.R5 IS IMPEADED AS PER ORDER DATED 25/03/2019 IN I.A.NO.1/2019).

BY ADVS.
MR.P.R.AJITH KUMAR, CGC

SRI.P.R.SREEJITH,SC,GOODS AND SERVICES TAX NETWORK
SRI.PALLAV SHISHODIA, SR. ADVOCATE
SRI.C E UNNIKRISHNAN SPL GP TAXES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.04.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, M/s. West Bengal Lottery Stockists Syndicate Private Limited applied for registration under the Central State Goods and Services Tax Act and Kerala State Goods and Services Tax Act. The application was submitted through the online. The petitioner uploaded the application on 16.01.2019. The petitioner received a notice on 31.01.2019 seeking additional information for registration stating the following reasons:

1. Documents to prove the ownership of the business premises and Bank details of the directors are not uploaded.
2. As per your application for registration you are intend to deal Lottery Services. But documents to prove that you are authorized to deal the lottery services under the following provisions are not furnished. 1) The Lotteries (Regulation) Act, 1998. (2) The Lotteries (Regulation) Rules, 2010. (3) Kerala Paper Lotteries (Regulation) Rules, 2005. (4) Kerala Paper lotteries (Regulation) Amendment Rules, 2018. (5) Direction U/s. 10 of the Lotteries (Regulation) Act, 1998 vide

FNO/17013/2/2011 CSR-I dated 2nd August 2011 by joint Secretary to Govt. of India, Ministry of Home Affairs."

2. The petitioner was asked to submit reply by 08.02.2019. The petitioner received an order on 02.02.2019 rejecting the petitioner's application stating that reply has not been found satisfactory. It is also stated that the application was not in accordance with the provisions of the Act. It is challenging this rejection, the petitioner approached this Court.

3. The learned counsel for the petitioner argued that in the light of Rule 9(5) of the Central Goods and Services Tax Rules, 2017, if the officer fails to take steps within three working days from the date of submission of the application, the petitioner is entitled for deemed registration. Accordingly, the petitioner seeks a declaratory relief in this writ petition. The petitioner also assailed the rejection on grounds of merit. The petitioner argued that the application cannot be rejected on any factors

outside the scope of GST Act and Rules. This is particularly with reference to reason No.2 in Ext.P8, which states that the petitioner needs to produce authorization to deal with the lottery Service under various statutory provisions.

4. This matter was heard originally at length on 22.3.2019. On the conclusion of the hearing, the learned Special Government Pleader sought further time and accordingly, it was adjourned to 25.3.2019. On that day, the respondents filed an impleading petition to implead the additional fifth respondent. Since the petitioner had not raised any objection, the additional fifth respondent was impleaded. Thereafter, I had the advantage of the hearing on the learned senior counsel appearing for the State on 04.04.2019. Since the additional fifth respondent sought time, it was posted today. Today, the additional fifth respondent has also filed a statement before this Court.

5. In regard to the deemed registration, the stand of the official respondents is that they have

generated response on 18.01.2019 pointing out defects. They placed reliance on Ext.R5(a). Therefore, it is submitted that deeming provision will not come to the aid of the petitioner. The stand taken by the petitioner is that since this was not communicated to the petitioner and therefore, the petitioner is entitled to the benefit of deeming provision. The learned counsel placed reliance on Section 169 of the GST Act, argued that there are different modes of communication enumerated under Section 169 and therefore, the respondents also could have sent communication through E-mail provided in the application. It is also pointed out that other modes prescribed under the GST Act provides tendering or giving communication through courier, messenger etc. Therefore, it was argued that the petitioner is entitled for the benefit of deeming provision.

6. The learned Special Government Pleader as well as the learned Senior Counsel appearing for

the State pointed out that the technical snag involved is a matter purely beyond the control of the Department and what is required on their side is only taking steps. Once steps are taken, legal fiction on deeming could not arise. On behalf of the additional fifth respondent, a statement has been filed. The statement clearly points out to the technical snag involved in the matter. This was observed after conducting an investigation by the fifth respondent. In such circumstances, the question is to whether deeming registration would arise, exists or not. Rule 9 of the GST Rules, refers to the verification of the application and approval. It refers to various steps in regard to processing the application. Sub Rule (5) states that if the proper officer fails to take any action within a period of three working days from the date of submission of the application, there shall be grant of deemed registration. Rule 9(1) states that the application shall be examined by the officer and if found to be in order, approve the

registration within three working days from the date of submission of the application. Rule 9(2) states that if the application is found defective, the officer shall issue notice to the applicant in FORM GST REG-03 within three working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04 within seven days from the date of receipt of such notice. The very purpose of Rule 9 is to provide ease of doing business and to promote the business and trade. The outer limit of three days for the grant of registration is fixed to secure the above purpose. Therefore, the officer concerned must be very prompt in taking such action. In this case, as evident from Ext.R5(a), there was an attempt on the part of the officer concerned to intimate the defects exist in the application. This could not be communicated to the applicant on account of a technical snag. The deeming provision has to be interpreted strictly as

it creates legal fiction. On the face of Rule 9(2), what is required on the part of an officer is to take steps within three days to intimate the applicant concerned in regard to the defect. If he had taken steps within three days, the applicant cannot have an advantage of deeming provision even though the applicant had not received such communication. The deeming provision does not stipulate that deeming would arise if the communication is not received by the applicant within the time as above. This is only a possible conclusion on harmonious reading of various provisions. Therefore, the petitioner cannot have an advantage of deeming registration.

7. Since the entire process of registration is through online and there is no physical mode, the fifth respondent suggested that the petitioner will have to file a fresh application. Then what remains is the reasons on which the application has been rejected. The learned Special Government Pleader submits that if this Court decides the

issue now on rejected application that would be more an academic exercise. The learned counsel for the petitioner submitted that these reasons stare at him. Therefore, this Court has to interfere with such irrelevant reasons; if not the petitioner would be denied registration again. It is to be noted that the petitioner was denied an opportunity to raise objection. Therefore, this Court ought to have relegated the matter for reconsideration by the officer concerned. But that is not possible. Then the only question is whether this Court need to interfere at this stage as a preemptive action; this is a delicate question. The learned senior counsel, in fact, had argued that though this Court has jurisdiction to set aside irrelevant consideration in an order, the Court cannot issue mandamus to give a registration. It is true proposition of law. However, it is to be noted that the rejection is now forming part of the record. The respondents are not willing to withdraw the aforesaid rejection order. In such circumstances,

the Court has to consider this matter to the extent on the irrelevant consideration made.

8. The learned counsel for the petitioner, mainly, placing reliance on reason No.2 argued that such reason is beyond the required scrutiny by the officer concerned. In regard to the first reason, necessarily, the authority has to consider along with any other relevant factors for consideration under the GST Act or Rules. But in regard to the second reason, I am also of the opinion that such matters could not be insisted from an applicant as there is no provision under the GST Act or Rules insisting production of any documents as referred in reason No.2 for consideration of the application. Therefore, I am of the view that the reason No.2 has to be set aside. However, the petitioner will have to satisfy all other relevant materials like proving ownership of business through such documents which may be required and also such details which they may be required to be furnished under the GST Act and Rules which are

relevant. Since, this rejection would stand in the way of the petitioner, this Court is of the view that the matter shall be reconsidered *de hors* any reasons as stated in the impugned order and a fresh decision shall be taken in accordance with the GST Act and Rules on submitting the application by the petitioner. The previous rejection of the application will not stand in the way of the petitioner in filing a fresh application. It is made clear that *de hors* the reasons stated in the impugned order, it shall be considered afresh.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

In

APPENDIX**PETITIONER'S/S EXHIBITS:**

EXHIBIT P1	TRUE COPY OF THE AGREEMENT DATED 20/01/2014.
EXHIBIT P2	TRUE COPY OF THE RENEWAL LETTER DATED 23/12/2016.
EXHIBIT P2 A	THE COPY OF THE RENEWAL LETTER DATED 29.06.2017.
EXHIBIT P2 B	THE COPY OF THE RENEWAL LETTER DATED 05.12.2017.
EXHIBIT P2 C	THE COPY OF THE RENEWAL LETTER DATED 21.02.2018.
EXHIBIT P3	TRUE COPY OF THE LETTERS ALLOWING THE SALE OF WEST BENGAL STATE LOTTERY IN OTHER STATES DATED 27.03.2018.
EXHIBIT P3 A	TRUE COPY OF THE LETTER INDICATING AMENDMENTS TO THE AGREEMENT 30.05.2018.
EXHIBIT P4	TRUE COPY OF THE SAID E-MAIL COMMUNICATION DATED 16.01.2019 ALLOTING TRN.
EXHIBIT P5	TRUE COPY OF THE FORM SUBMITTED ALONG WITH SUPPORTING DOCUMENTS CONSISTING OF CERTIFICATE OF INCORPORATION, LEASE DEED, DETAILS OF DIRECTORS,
EXHIBIT P6	TRUE COPY OF THE SAID E-MAIL COMMUNICATION DATED 16.01.2019 (TIME.9.02 PM) .
EXHIBIT P7	TRUE COPY OF THE ACKNOWLEDGEMENT IN FORM GST REG-2.
EXHIBIT P8	PRINT OUT OF THE SHOW CAUSE NOTICE DATED 31.1.2019.
EXHIBIT P9	COPY EMAIL COMMUNICATION ON 31.1.2019 (TIME 10.15 PM) , REQUESTING THE PETITIONER TO LOG INTO ITS ACCOUNT AND TO ACKNOWLEDGE THE RECEIPT OF THE SHOW CAUSE NOTICE FOR ITS REGISTRATION APPLICATION.

- EXHIBIT P10 A COPY OF THE ORDER OF REJECTION DATED
02/02/2019.
- EXHIBIT P11 COPY OF THE EMAIL COMMUNICATION ON 2.2.2019.
- EXHIBIT P12 A SCREEN SHOT OF THE GST PORTAL PERTAINING
TO THE POSTING OF REGISTRATION SHOW CAUSE
NOTICE AND REGISTRATION REJECTION ORDER.

RESPONDENTS EXHIBITS:

EXHIBIT R5(A) : A COPY OF THE SCREENSHOT EVIDENCING ISSUANCE OF SHOW-
CAUSE NOTICE AGAINST THE ARN.

//TRUE COPY//

P.A.TO JUDGE