

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 7TH DAY OF AUGUST 2018 / 16TH SRAVANA, 1940

WP (C) .No. 25972 of 2018

PETITIONER

EARTHLINE SERVICES PRIVATE LIMITED,
REPRESENTED BY MR.VARKEY THOMAS, DIRECTOR,
1A, 4TH FLOOR, 11TH CROSS ROAD,
LINGARAJAPURAM, ST.THOMAS TOWN POST,
BANGALORE-560 084.

BY ADVS.SRI.SUKUMAR NAINAN OOMMEN
SRI.SHERRY SAMUEL OOMMEN
SRI.RAHUL IPE PRASAD

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT BUILDING, THIRUVANANTHAPURAM-695 001.
2. DEPUTY COMMISSIONER APPEALS-II,
DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI T.A.UNNIKRISHNAN
GOVERNMENT PLEADER DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-08-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE IMPUGNED 'POSTING NOTICE'
NO.2423/2015 DATED 18.07.2018 ISSUED BY THE 2ND
RESPONDENT.
- EXHIBIT P2: TRUE COPY OF PETITIONER'S LETTER DATED 27.06.2014.
- EXHIBIT P3; TRUE COPY OF THE PETITIONER'S REPLY DATED
30.10.2014.
- EXHIBIT P4: TRUE COPY OF UNDATED DEMAND NOTICE ISSUED BY
THE CTO.
- EXHIBIT P5: TRUE COPY OF ORDER OF THE LEARNED SINGLE JUDGE
DATED 08.12.2014 IN WP 31711/2014.
- EXHIBIT P6: TRUE COPY OF ORDER OF THE HON'BLE DB DATED
06.10.2015 IN W.A.24 OF 2015.
- EXHIBIT P7: TRUE COPY OF PETITIONER'S APPEAL DATED 02.10.2015.
- EXHIBIT P8: TRUE COPY OF PETITIONER'S ADDITIONAL STATEMENT
DATED 25.01.2016.

JJJ

DAMA SESHADRI NAIDU, J.

W.P.(C) No. 25972 of 2018 (V)

Dated: 07th August, 2018

J U D G M E N T

The petitioner, a Private Limited Company, is a dealer under Kerala Value Added Tax Act, 2003 (KVAT Act). Faced with the notice dated 02.06.2014 under Section 25(1) of the KVAT Act, it has filed this writ petition. It sought the following reliefs:

- "i. Issue a writ of mandamus or any other appropriate writ, order or direction declaring Section 174(1)(i) of the Kerala State Goods and Services Tax Act, 2017 as being unconstitutional for contravention of Sections 17(b)(ii) and 19 of the Constitution (One Hundred and First Amendment) Act, 2016; and strike down the same.
- ii. Issue a writ of mandamus or any other appropriate writ, order or direction declaring Section 174(2) of the Kerala State Goods and Services Tax Act, 2017 as being unconstitutional for contravention of Sections 17(b)(ii) and 19 of the Constitution (One Hundred and First Amendment) Act, 2016; and strike down the same.
- iii. Issue a writ of mandamus or any other appropriate writ, order or direction setting aside the impugned 'Posting Notice' in Exhibit P1.
- iv. Issue such other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

v. Award costs to the petitioners"

2. A learned Division Bench of this Court in *M/s. Chodayil Pvt. Ltd v. The Assistant Commissioner (Assessment)*¹ has ruled on the question of limitation. Now, both the learned Counsel agree that the issue of limitation raised in this writ petition thus stands squarely answered—and in the petitioner's favour, at that.

3. Once a *lis* can be disposed of, and a grievance can be redressed, on the statutory adjudication, the other issues, especially involving constitutional validity, need not be addressed. The *canon of constitutional avoidance* is well established.

I therefore allow this writ petition, on the issue of limitation, applying the ratio of *M/s. Chodayil Pvt. Ltd.*

Sd/-
DAMA SESHADRI NAIDU
JUDGE

jjj 07/08/2018

¹ Judgment dated 5th July 2018