

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 30TH DAY OF SEPTEMBER 2024 / 8TH ASWINA, 1946

WP(C) NO. 29409 OF 2024

PETITIONER:

AYYAPPAN PILLAI,
AGED 66 YEARS,
S/O. NATARAJA PILLAI, M/S AYYAPA BANGLES, MC 873,
CHINNAKKADA, KOLLAM, PIN - 691001.

BY ADVS.
BOBBY JOHN
S.AJAYGHOSH KUMAR
SANGEETHA S.KAMATH

RESPONDENTS:

- 1 THE STATE TAX OFFICER, MOBILE SQUAD NO.5, KOLLAM,
O/O. DEPUTY COMMISSIONER (INTELLIGENCE), SGST
DEPARTMENT, TAX COMPLEX, ASRAMAM, KOLLAM, PIN - 691002.
- 2 THE DEPUTY COMMISSIONER, TAX PAYER SERVICE DIVISION,
KOLLAM, SGST DEPARTMENT, TAX COMPLEX, ASRAMAM P O,
KOLLAM, PIN - 691002.
- 3 THE COMMISSIONER OF STATE GOODS AND SERVICE TAX
DEPARTMENT,
9TH FLOOR, TAX TOWER, KILLIPPALAM, KARAMANA P.O.,
THIRUVANANTHAPURAM, PIN - 695002.
- 4 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN -
691001.
- 5 THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
REPRESENTED BY THE PRINCIPAL COMMISSIONER GST, GST
POLICY WING, NO.503, B WING, 5TH FLOOR, CBIC,
HUDCOVISHALA BUILDING, BHIKAJI CAMA PLACE, R. K. PURAM,
NEW DELHI, PIN - 110066.



**6 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, RAJPATH MARG, CENTRAL
SECRETARIAT, NEW DELHI, PIN - 110001.**

BY SMT.JASMINE M M, GP

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30.09.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



JUDGMENT

The petitioner is a registered person under the CGST / SGST Acts. The petitioner was served with Ext.P3 show cause notice under Section 74 of the CGST Act calling upon the petitioner to show cause as to why certain proposals should not be finalized against the petitioner. The petitioner submitted Ext.P4 reply. After considering the reply submitted by the petitioner and after affording to the petitioner an opportunity of being heard, Ext.P5 order was issued by the 2nd respondent confirming the proposals in the show cause notice and finalizing a demand against the petitioner. The petitioner filed Ext.P6 application for rectification under Section 161 of the CGST Act, which was considered and rejected by Ext.P10 order. The petitioner is thus before this Court challenging Exts.P5 and P10 orders on various grounds.

2. The learned counsel appearing for the petitioner would vehemently submit that the principal ground of challenge is that there was no just cause or reason to invoke the provisions of Section 74 of the CGST / SGST Acts in the case of the petitioner. It is submitted that the wordings of Section 74 will suggest that it is not every suppression or misstatement that should lead to



proceedings under Section 74 and unless such suppression or misstatement was willful and with the intention of evading tax, a proceeding under Section 74 cannot be justified in law. It is submitted that a reading of the show cause notice will show that one of the reasons mentioned for invoking Section 74 is that the petitioner is not a registered person. It is submitted that this is a factually incorrect statement. It is submitted that the reasoning in the show cause notice for invoking Section 74 of the CGST / SGST Acts in the case of the petitioner is obviously a cut copy paste from some other notice issued under Section 74 and has no relationship with the facts of the case in so far as it pertains to the petitioner. It is pointed out with reference to Ext.P5 order that there has been a complete misunderstanding of the factual situation and without actually verifying the stock and considering the explanations of the petitioner, a huge demand has been made on the petitioner. It is submitted that though the petitioner submitted an application for rectification to correct the obvious mistakes in Ext.P5 order, the rectification application was also mechanically rejected by Ext.P10 order. It is submitted that in such circumstances, Exts.P5 and P10 orders are liable to be set aside and the matter is liable to be remanded to the files of the 2nd respondent for fresh adjudication,



in accordance with the law. It is submitted that the proceedings are also liable to be quashed on the ground that there was no reason to invoke Section 74 of the CGST / SGST Acts.

3. The learned Government Pleader appearing for the respondents would vehemently oppose the grant of any relief to the petitioner. It is pointed out from the show cause notice as also from Ext.P5 order that there are sufficient justifications for invoking Section 74 of the CGST/ SGST Acts in the facts of the present case. Pertinently it is pointed out that certain documents which were stated to be 'estimates' were recovered which would show that the sales or part of it was not being accurately recorded by the petitioner leading to loss of revenue. It is submitted that there were discrepancies in the stock which would also show that there was unaccounted sales by the petitioner. It is submitted that the contention of the learned counsel for the petitioner that the invocation of Section 74 was on the basis that the petitioner is not a registered person is not correct as the 1st paragraph of the show cause notice itself refers to the petitioner as a registered person. It is submitted that the use of the word 'registered' in paragraph 46 of the show cause notice refers only to the failure to register the actual sales and suppression and not to the fact that the petitioner is an



unregistered person. It is submitted that the petitioner did not even raised any objection before the officer that the provisions of Section 74 were wrongly invoked in the facts and circumstances of this case. It is submitted that even while considering the application for rectification, the Officer had asked for certain details and as can be seen from Ext.P10, the petitioner failed to produce materials to justify any of the contentions taken by him leading to rejection of the application for rectification.

4. Having heard the learned counsel for the petitioner and the learned Government Pleader, I am of the view that the petitioner has not made out any case for grant of the relief sought for in the writ petition. A perusal of the show cause notice would indicate that there are several instances of suppression which have been pointed out in the show cause notice as a justification for invoking Section 74 of the CGST / SGST Acts. While the petitioner may have raised several contentions to show that the allegations are not correct to reach a conclusion the adjudication of disputed questions of fact will be necessary. It is for the petitioner to get his claim adjudicated by the statutory authorities under the CGST / SGST Acts. The procedure under Article 226 of the Constitution of India cannot be invoked to



determine disputed questions of fact especially on account of the procedure adopted in this Court in respect of writ petitions under Article 226 of the Constitution of India. The petitioner has no case that the alternate remedy available to the petitioner is not effective including for adjudicating the question as to whether there was just cause or reason for invoking the extended period of limitation (under Section 74) in the facts and circumstances of this case. The learned Government Pleader is also right in contending that the Officer did not invoke the extended period of limitation on the ground that the petitioner was an unregistered person but on the ground of suppression of sales willfully for the purpose of evasion of tax. The wordings of Section 74 clearly indicates that in such circumstances, the provisions of Section 74 could be invoked. A reading of the Ext.P10 order indicates that though not within the scope of rectification, the Officer had called for further details from the petitioner and the petitioner failed to produce any further details for the purpose of considering the contentions taken in the application for rectification. For all these reasons, the writ petition fails and will stand dismissed.

However, considering the fact that Ext.P5 order was issued on 10.12.2023 and the petitioner had filed Ext.P6



application for rectification on 22.01.2024 and the fact that the rectification application was rejected only on 08.05.2024 and this writ petition was filed in the month of August 2024, I am of the view that the period from the date of filing of the rectification application till today can be excluded for the purpose of determining any period of limitation within which the petitioner had to file an appeal against Ext.P5 order. It is also clarified that no observation in this judgment will preclude the petitioner on raising a contention before the Appellate Authority that there was no just cause or reason for invoking the provisions of Section 74 of the CGST / SGST Acts.

The writ petition is ordered accordingly.

Sd/-
GOPINATH P.
JUDGE

DK



APPENDIX OF WP(C) 29409/2024

PETITIONER EXHIBITS

- Exhibit P1** TRUE COPY OF THE CASE PROCEEDINGS OF INSPECTION AND SEARCH OF BUSINESS PLACE OF THE PETITIONER DATED 16.07.2022, ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
- Exhibit P2** TRUE COPY OF THE REPLY DATED 26.08.2022 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- Exhibit P3** TRUE COPY OF THE SHOW CAUSE NOTICE DATED 29.11.2022 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
- Exhibit P4** THE TRUE COPY THE REPLY DATED 03.12.2022 SUBMITTED BY THE PETITIONER IN RESPONSE TO THE THE SHOW CAUSE NOTICE
- Exhibit P5** TRUE COPY OF THE ORDER DATED 10.12.2023 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER
- Exhibit P6** TRUE COPY OF THE APPLICATION FOR RECTIFICATION DATED 09.02.2024 SUBMITTED BY THE PETITIONER
- Exhibit P7** TRUE COPY OF THE NOTICE DATED 25.03.2024 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER
- Exhibit P8** TRUE COPY OF THE REPLY DATED 27.03.2024 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ON 15.04.2024
- Exhibit P9** TRUE COPY OF THE HEARING NOTE DATED 15.04.2024 SUBMITTED TO THE 2ND RESPONDENT ON BEHALF OF THE PETITIONER



Exhibit P10

**TRUE COPY OF THE ORDER DATED
08.05.2024 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER**