



2024/KER/55979

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946

WP(C) NO. 1520 OF 2021

PETITIONER:

INTERSOURCE EXPORTS (P) LTD.
PROPRIETORS OF 'PRIYADARSHINI', WAYANAD ROAD,
CALICUT - 673 001, REP. BY DR. SANTHA RAGHUNATH, DIRECTOR.

BY ADVS.
PREMJIT NAGENDRAN
SRI.P.RAGHUNATH
SMT.M.SHYLAJA

RESPONDENT:

DEPUTY COMMISSIONER OF STATE TAX
SGST DEPARTMENT, SPECIAL CIRCLE - I, CALICUT - 673 006.

OTHER PRESENT:

SMT. THUSHARA JAMES (SR GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.07.2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

This writ petition has been filed challenging the proceedings initiated by Ext.P1 notice issued under the provisions of Section 25(1) of the Kerala Value Added Tax Act, 2003 ('KVAT Act' for short).

2. The principal contention raised by the learned counsel appearing for the petitioner is that in the earlier round of litigation between the petitioner and the respondent, this Court, by Ext.P3 judgment, had directed that the assessments in respect of which the period of limitation for reopening under Section 25 of the KVAT was to expire by 31.03.2017 can be reopened upto 31.03.2018 by virtue of the amendment to the third proviso to Section 25 (1) of the KVAT Act vide the Kerala Finance Act, 2017. It is submitted that though Ext.P1 notice issued in respect of the year 2011-12 is on 18.03.2018, it was served only on 25.03.2019 proposing a hearing on 30.03.2019 and even the earlier round of litigation proceeded on the basis that the date "18.03.2018" mentioned in Ext.P1 was a mistake and the actual date of Ext.P1 is 18.03.2019. In other words, it is submitted that the proceedings cannot be continued as the parties are bound by the earlier declaration contained in Ext.P3 judgment, which makes it clear that the proceedings under Section 25(1) of the KVAT Act for the year 2011-12 can be continued only upto 31.03.2018.



3. The learned Senior Government Pleader submits that Ext.P1 notice is issued within the time specified by this Court in Ext.P3 judgment though it was served only later. It is submitted that the earlier writ petition filed by the petitioner was disposed of only on 06.12.2019 and that may be the reason why there was delay in actually serving the notice on the petitioner. However, it is not disputed that Ext.P1 notice though dated 18.03.2018, was actually served on the petitioner only on 25.03.2019.

4. Having heard the learned counsel appearing for the petitioner and the learned Senior Government Pleader appearing for the respondent, I am of the view that there is no material for this Court to conclude that Ext.P1 notice was actually issued on 18.03.2018 as is mentioned therein, as it is quite unlikely that a notice dated 18.03.2018 was not served on the petitioner till 25.03.2019. It is also seen from the notice that a hearing was proposed only on 30.03.2019 and it is quite inconceivable that a notice dated 18.03.2018 will propose a hearing more than a year later on 30.03.2019.

5. Therefore, in the facts and circumstances of this case, I can only conclude that the date 18.03.2018 mentioned in Ext.P1 can only be a typographical error and that the said notice was issued only on 18.03.2019.



In that view of the matter, I am of the opinion that the issue stands covered against the respondent by Ext.P3 judgment itself, where it has been held that the assessments which were getting time barred by 31.03.2017 can continue only upto 31.03.2018. The said judgment is a binding *inter partes* judgment between the petitioner and the respondent. Therefore, proceedings cannot be continued against the petitioner on the basis of a notice issued after the date specified in Ext.P3 judgment for the assessment year 2011-12.

Accordingly, this writ petition is allowed and Ext.P6 will stand quashed.

**Sd/-
GOPINATH P.
JUDGE**

rp



APPENDIX OF WP(C) 1520/2021

PETITIONER EXHIBITS

- EXHIBIT P1 PHOTOCOPY OF NOTICE U/S 25(1) OF KVAT FOR 2011-12 RECD. ON 25.03.2019 DATED 18.03.2018.
- EXHIBIT P2 PHOTOCOPY OF WPC 10718/2019 FILED CHALLENGING EXT. P1 NOTICE.
- EXHIBIT P3 PHOTOCOPY OF JUDGMENT DATED 06.12.2019 IN WPC NO.10718/2019.
- EXHIBIT P4 PHOTOCOPY OF NOTICE DATED 10.03.2020 U/S 25 OF KVAT ACT FOR 2011-12.
- EXHIBIT P5 PHOTOCOPY OF REPLY DATED 18.03.2020.
- EXHIBIT P6 PHOTOCOPY OF ASSESSMENT ORDER U/S 25(1) OF KVAT ACT FOR 2011-12 DATED 27.07.2020.
- EXHIBIT P7 PHOTOCOPY OF LETTER FROM PUBLIC INFORMATION OFFICER UNDER RTI ACT DATED 08.12.2020 WITH COPY OF EXT. P1.