



2024/KER/51183

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 4TH DAY OF JULY 2024 / 13TH ASHADHA, 1946

WP(C) NO. 36495 OF 2015

PETITIONER:

MYTHREE ASSOCIATES
REPRESENTED BY ITS AUTHORIZED PARTNER C.K. RAGHAVAN,
AGED 54 YEARS, U.K BUILDING NEAR MSS COMPLEX, 11/36 A,
OPP. FAMILY COURT, CHEROTTY ROAD, CALICUT.

BY ADVS.

A.KUMAR (SR.)
P.J.ANILKUMAR
JACOB JOHN (TRIVANDRUM)
G.MINI(1748)
P.S.SREE PRASAD

RESPONDENTS:

- 1 COMMERCIAL TAX OFFICER,
1ST CIRCLE, 4TH FLOOR, SALES TAX COMPLEX,
JAWAHAR NAGAR, SALES TAX OFFICE ROAD,
KOZHIKODE (CALICUT), KERALA - 673 006.
- 2 THIRUVABHARANAM COMMISSIONER,
ARANMULA P.O., ARNAMULA, PIN - 689 533.
- 3 TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY,
TRAVANCORE DEVASWOM BOARD OFFICE, NANTHENCODE,
TRIVANDRUM, PIN - 695 014.

BY ADVS.

G.BIJU (SC)(TDB)
ARUN AJAY SHANKER (GP)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003 (hereinafter referred to as the 'KVAT Act'). The business of the petitioner involves the purchase and sale of scrap materials. During the period from 20-09-2013 to 30-01-2014, the petitioner purchased certain scrap materials from the Travancore Devaswom Board. It is the case of the petitioner that the Board had sold these scrap materials after obtaining permission from this Court in DBA No.54/2012 and had also collected 5% as tax under the KVAT Act on the amounts remitted by the petitioner towards the auction amount. The petitioner's claim is that since the Travancore Devaswom Board was not a registered dealer, the credit of the amounts paid by the petitioner as tax has not been given to him while completing the assessment for the year 2013-2014.

2. It is not disputed before me that the amount of tax collected from the petitioner has been remitted to the



State Exchequer by the Travancore Devaswom Board. It is clear from a reading of Ext.P4 modified order of assessment that the denial of credit to the petitioner was on the basis that the Travancore Devaswom Board was not a registered dealer and therefore the petitioner is not entitled to input tax credit under Section 11 of the KVAT Act.

3. Having heard the learned Senior Counsel appearing for the petitioner, learned Government Pleader appearing for the 1st respondent and the learned Standing Counsel appearing for respondent Nos.2 and 3, I am of the opinion that this is a fit case where the competent authority, who exercises powers of the Commissioner under the KVAT Act, must exercise jurisdiction under Section 3 of the KVAT Act so as to ensure that the credit of the amount of tax paid by the petitioner, which has admittedly been received to the credit of the State Exchequer, is extended to the petitioner. Since it is admitted that the petitioner has paid tax at the prescribed



rate on the materials procured by him from the Travancore Devaswom Board and since this amount has already been paid over to the State Exchequer, any denial of credit to the petitioner solely on the ground that the Travancore Devaswom Board/ Thiruvabharanam Commissioner was not registered under the KVAT Act would be unjust. Moreover, the definition of 'casual trader' under Section 2(xi) of the KVAT Act will also indicate that the Travancore Devaswom Board may not even fall within the definition of a casual trader for the purposes of the KVAT Act. The provisions of Section 3(2)(c) of the KVAT Act indicate that the Commissioner shall have superintendence over all officers and persons employed in the execution of the Act and the Commissioner may issue such orders, instructions and directions to such officers and persons as he may deem fit, for the proper administration of this Act.

4. Therefore, this writ petition will stand disposed of directing that if the petitioner makes a suitable



representation before the officer presently exercising the jurisdiction of Commissioner under the provisions of the KVAT Act, the said officer shall, having regard to the observations contained in this judgment, pass necessary orders giving instructions to the appropriate officer to provide credit of the amount paid by the petitioner as tax on the purchase of materials from the Travancore Devaswom Board to the extent such tax has been credited to the State Exchequer.

Writ petition is disposed of as above.

**Sd/-
GOPINATH P.
JUDGE**

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APPENDIX OF WP(C) 36495/2015

PETITIONER'S EXHIBITS

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| EXHIBIT P1 | JUDGEMENT OF KERALA HIGH COURT IN WP(C)
NO. 4997 OF 2014 DATED 10.03.2014 |
| EXHIBIT P2 | COPY OF THE LETTER SENT BY RESPONDENT
NO. 2 DATED 18.07.2014 |
| EXHIBIT P3 | COPY OF THE ASSESSMENT ORDER |
| EXHIBIT P4 | COPY OF THE ORDER PASSED BY ASSISTANT
COMMISSIONER OF APPEALS |
| EXHIBIT P5 | COPY OF THE ORDER OF THE CENTRAL SALES
TAX FOR THE ASSESSMENT YEAR 2013-2014
DEMANDING AN AMOUNT RS. 498800/- |