



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

WA NO. 477 OF 2024

JUDGMENT DATED 26.02.2024

ARISING FROM WP(C) NO.3661 OF 2022

APPELLANT/PETITIONER:

S. VIJAYAN
AGED 61 YEARS
PROPRIETOR, POOJA CASHEW FACTORY,
ANTHICHIRA, THUVAYOOR NORTH,
MANAKKALA P.O, ADOOR, PIN - 691551.

BY ADV SERGI JOSEPH THOMAS

RESPONDENTS/RESPONDENTS:

- 1 COMMISSIONER OF STATE GOODS AND SERVICE TAXES
DEPARTMENT, TAX TOWERS, KARAMANA,
THIRUVANANTHAPURAM, PIN - 695002.
- 2 THE ASSISTANT COMMISSIONER (ASSESSMENT)
SPECIAL CIRCLE, SATTE GOODS AND SERVICE TAXES
DEPARTMENT, KOLLAM, PIN - 691002,
NOW RE-DESIGNATED AS DEPUTY COMMISSIONER OF STATE
TAX, SPECIAL CIRCLE,
STATE GOODS AND SERVICE TAXES DEPARTMENT,
KOLLAM, PIN - 691002.
- 3 THE DEPUTY TAHSILDAR (RR)
TALUK OFFICE, ADOOR, PIN - 601623.
- 4 THE VILLAGE OFFICER,
ERATHU VILLAGE, ADOOR, PIN - 691551.



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BY SENIOR GOVERNMENT PLEADER SRI.V.K.SHAMSUDHEEN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
22.07.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

The petitioner in WP(C). No.3661 of 2022 is the appellant herein aggrieved by the judgment dated 26.02.2024 of the learned Single Judge in the Writ Petition.

2. The brief facts necessary for the disposal of the Writ Appeal are as follows:

The appellant had filed the Writ Petition challenging Ext.P6 series of revenue recovery notices issued for recovery of amounts allegedly due from the appellant under the Kerala Value Added Tax Act (for short 'the KVAT Act') and Central Sales Tax Act (for short 'the CST Act') for various financial years. The case of the appellant in the Writ Petition was that in respect of the tax dues under the CST Act and KVAT Act for various assessment years, he had opted for settlement in accordance with the Amnesty Scheme 2020. The application preferred by the appellant for settlement of the tax dues in relation to the assessment years 2011-12, 2013-14, 2014-15 and 2016-17 under the CST Act and 2007-08, 2011-12, 2012-13 and 2013-14 under the KVAT Act was preferred on 28.11.2020. The application was considered for the benefit of the Amnesty Scheme, and the appellant was intimated by a



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communication dated 12.02.2021 that he had to pay an amount of Rs.1,28,373/- towards full and final settlement of the tax dues for the aforesaid years if the payment was made in a single installment. Alternatively, he could pay the amount in four installments by paying the 1st installment before the cut-off date of 30 days from the date of intimation. In the latter event, the total amount payable would be Rs.1,60,465/-. The last date for making the payment in terms of the Amnesty Scheme was 14.03.2021.

3. The appellant, instead of making the payment, wrote to the Department by a communication dated 12.03.2021 that inasmuch as there was an amount of Rs.5 lakhs that was due to him by way of refund pursuant to a modified order passed by the authorities on 30.07.2019, the Amnesty amount could be adjusted from the said refund amount due to him. In support of his request, he also relied upon the judgment dated 24.07.2020 in WP(C). No.14031 of 2020 [**M/s. Steel Exchange India Ltd. v. Assistant Commissioner**], which judgment was affirmed by the Division Bench by judgment dated 25.01.2021 in WA No.189 of 2021. In the above judgment, this Court had found that the adjustment of the amount due to the assessee under the Amnesty would not offend the provisions of the Amnesty Scheme. It would appear, however, that the respondent Department did not accede to the request of the appellant, and finding that no payment had been effected by the cut-off



date, the respondents treated the appellant as not having opted for the Amnesty Scheme and proceeded to issue the revenue recovery notices that were impugned in the Writ petition.

4. The learned Single Judge, who considered the Writ Petition found that the Amnesty Scheme was essentially a Code in itself, and once an order was passed by the authority determining the amount to be paid by an assessee under the Scheme, the said authority became *functus officio* to consider any other option of payment of the Amnesty amount. The Writ petition preferred by the appellant was, therefore, dismissed by the learned Single Judge.

5. When the appeal came up for admission before us, we directed the learned Government Pleader to get instructions as to whether or not the refund amount of Rs.5 lakhs due to the appellant had already been adjusted by the Department towards the dues outstanding from the appellant. Through a counter affidavit that has since been filed on behalf of the respondents, we are told that the request of the appellant for adjustment of the refund amount due to him towards the settlement amount under the Amnesty Scheme had been received on 12.03.2021, well before the last date for receipt of payment, namely, 14.03.2021. The respondents, however, chose not to act upon the request since there was no specific direction from the court to them based on the



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decision in **Steel Exchange Limited (Supra)**.

6. We have heard Sri.Sergi Joseph Thomas, the learned counsel for the appellant and Sri. V.K.Shamsudheen, the learned Senior Government Pleader for the respondents.

7. On a consideration of the rival submissions, we are of the view that in the light of the judgment of the Division Bench of this Court referred above, it was open to the respondents to consider an adjustment of the refund amount due to the appellant towards the amounts due from him by way of settlement under the Amnesty Scheme. We do not find the reasons furnished by the respondents for not acceding to the request of the appellant to be legally sustainable. Under the said circumstances, we feel that the ends of justice would be met by adjusting the Amnesty amount of Rs.1,60,465/- from the Rs.5 lakhs that is due to the appellant by way of refund, and utilising the remaining amount for settlement of the dues outstanding from the appellant in the assessment years other than those that were opted for settlement under the 2020 Amnesty Scheme.

8. We, therefore, allow this Writ Appeal by setting aside the impugned judgment of the learned Single Judge, and by directing the respondents to deduct the amount of Rs.1,60,465/- from the amount of



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Rs.5 lakhs that is due to the appellant by way of refund and treat the dues for the assessment years opted for under the Amnesty Scheme 2020 as finally settled under the said Scheme. As regards the balance amount remaining after adjusting the aforesaid amount of Rs.1,60,465/- from the refund amount due to the appellant, the same can be used for setting off against amounts outstanding from the appellant by way of tax and interest for the assessment years in respect of which the appellant had not opted for any Amnesty Scheme or for setting off against any amount that may be determined as payable by the appellant for settlement of dues under any applicable Amnesty Scheme, if introduced by the State Government this year.

The Writ Appeal is disposed as above.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

mns



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APPENDIX OF WA 477/2024

RESPONDENT ANNEXURES

**ANNEXURE R2 (A) TRUE COPY OF THE COMMUNICATION DATED
29/01/2022**

ANNEXURE R2 (B) TRUE COPY OF THE TABULATION SHEET