(2023) 08 KL CK 0193

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22620 Of 2019

Abdul Razak T		APPELLANT
	Vs	
State Of Kerala		RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Finance Act 2017 — Section 25, 25(1)
Kerala State Goods and Services Tax Act, 2017 — Section 25, 25(1), 174

Citation : (2023) 08 KL CK 0193

Hon'ble Judges : Dinesh Kumar Singh, J

Bench : Single Bench

Advocate : P.N.Damodaran Namboodirishri, Hrithwik D. Namboothiri, Rasmitha Ramachandran

Final Decision : Allowed

Judgement

Dinesh Kumar Singh, J

1. Heard Mr Hrithwik D Namboothiri, learned Counsel for the petitioner and Ms Rasmitha Ramachandran, learned Government Pleader for the respondents.

2. The present writ petition under Article 226 of the Constitution of India has been filed challenging Ext.P5 assessment order dated 28.03.2019 passed by the 1st respondent under the Kerala Valued Added Tax Act 2005 (for short, 'KVAT Act') in respect of the Assessment Year 2011-12. The petitioner is a registered dealer under the KVAT Act and running the business under the name and style of M/s Brothers Metals, Market Road, Kalpetta. The petitioner was issued notice dated 16.04.2018 (Ext.P3) for the Assessment Year 2011-12, proposing to levy tax on the balance taxable turnover of Rs.2,16,38,106.32 @ 4% with cess @ 1% and interest.

2.1 Initially, the petitioner filed W.P.(C) No.18924/2018 before this Court impugning the said notice on several grounds, including the constitutionality of the KVAT Act after the 101st Constitutional Amendment came into force by which the GST regime was introduced. The said writ petition and other connected writ petitions were dismissed by the learned Single Judge, holding that the notice issued to the petitioner was constitutionally valid. However, the question of limitation for issuing the said notice was left open to be decided by the competent authority after the assessment is completed pursuant to the said notice.

3. After the judgment dated 11.01.2019 passed by the learned Single Judge, several assessees filed writ petitions before this Court impugning the notices issued to them on the ground of limitation. The learned Single Judge vide judgment dated 06.12.2019 delivered in W.P.(C) No.32439/2019 (D) and other connected writ petitions held that the State Legislature did not have the power to amend Section 25 of the KVAT Act through the Kerala Finance Act 2018. The amendment in Section 25 of the KVAT Act by the Kerala Finance Act 2018 was declared unconstitutional and beyond the legislative competence of the State Legislature in view of the 101st Constitutional Amendment Act 2016.

3.1 The learned Single Judge further held that the assessments in respect of which the period of limitation for reopening under Section 25 of the KVAT Act was to expire by 31.03.2017 could be reopened up to 31.03.2018 by virtue of the amendment to the third proviso to Section 25(1) vide Kerala Finance Act 2017. However, the assessments in respect of which the period of limitation for re-opening under Section 25 of the KVAT Act expired by 31.03.2018 could not be re-opened up to 31.03.2019 or thereafter, by relying on the amendments introduced by Kerala Finance Act 2018 as the State Legislature did not have the legislative competence to amend the KVAT Act after 101st Constitutional Amendment Act 2016 and the repeal of the KVAT Act pursuant thereto on 22.06.2017.

4. The said judgment of the learned Single Judge was upheld by the Division Bench of this court in W.A. No.3/2021 and other connected Writ Appeals vide judgment dated 22.08.2022. The learned Division Bench, in paragraph 26, held as under:

“26. We have taken note of the applicable amendments introduced by CAA to the Constitution of India, corresponding changes in the schedules, and taken note of the repeal of the KVAT Act and the extent of operation of Section 174 of the Kerala Goods and Services Taxes Act. The legislative competence to amend KVAT Act through Finance Act 5/2018 is not established. In our view, and from the scope and scheme of powers enjoyed by the Centre and the State as regards the supply of goods and services, the power to amend the KVAT Act is unavailable. The principle laid down in the A Hajee Abdul Shukoor and Company case is also applied by the Gujarat and Telangana High Courts. The amendment to KVAT Act by Finance Act 5/2018 is without competence. We are in complete agreement with the view taken in the judgment under appeal i.e., Baiju A A case. The two points on which the appeals are maintained are rejected.”

5. In the present case, the assessment could have been re-opened by 31.03.2018 in view of the amendment carried out under Section 25(1) by the Kerala Finance Act 2017. After 31.03.2018, no power remains vested in the State Legislature to amend. As the amendment brought in by the Kerala Finance Act 2018 in Section 25(1) of the KVAT Act has been declared ultra vires, no power remains vested with the authority to re-open the assessment for which the limitation got expired by 31.03.2018. In this case, the notice was issued on 16.04.2018 for re-opening the assessment in respect of Assessment Year 2011-12, for which the limitation expired on 31.03.2018.

In view of the judgment of the learned Division Bench (supra), I find that the notice dated 16.04.2018 and subsequent assessment order in Exts. P3 and P5 are illegal and ultra vires. Therefore, the same are set aside. The writ petition is allowed.

