courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 18/09/2026

(2022) 04 KL CK 0033

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26522 Of 2021

Color Homes APPELLANT

Vs

State Tax Officer (Intelligence) RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 25(1), 44(10), 67

Citation : (2022) 04 KL CK 0033

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : R.Jaikrishna, C.S.Arun Shankar, Narayani Harikrishnan, M.M.Jasmin

Final Decision : Disposed Of

Judgement

Bechu Kurian Thomas, J.

1. Based on a shop inspection, conducted at the business premises of the petitioner, a composite order of penalty under section 67 and section 44(10) of the Kerala Value Added Tax Act, 2003 (for short 'the Act') was issued. Pursuant to the orders of penalty, a revised assessment was also issued under section 25(1) of the Act. Though the orders of penalty and the assessment were separately challenged in revision and in appeal, petitioner seeks for directions to consider its application claiming benefit of the Amnesty Scheme for the assessment year 2013-14 introduced as per the Kerala Finance Act, 2020. Further directions are also sought to update the web portal with the modified assessment order, issued to the petitioner.

2. Petitioner was a registered dealer under the Act, engaged in the business of tiles and other building materials. For the assessment year 2013-14, based on an inspection conducted at the business premises of the petitioner, the first respondent issued a composite order of penalty under section 67 and section 44(10) of the Act. Reassessment under section 25(1) of the Act was also carried out, based on the penalty order. A revision petition was preferred against the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/color-homes-appellant-hash-state-...

penalty imposed under section 67, while, appeals were preferred against the order of penalty under section 44(10) of the Act and the order of reassessment. The revision preferred against the penalty order under section 67 of the Act resulted in the order being modified, while the penalty imposed under section 44(10) of the Act, was reduced in appeal and the order of assessment under section 25(1) was set aside and remanded for fresh consideration. Petitioner challenged the modification of the penalty order issued under section 67 before the VAT Appellate Tribunal, Kozhikode.

3. Petitioner has alleged that the Tax Officers ought to have issued modified orders, based on the orders of the appellate and revisional authorities, but they failed to do so.

4. While so, the Kerala Finance Act, 2020 was introduced bringing forth an Amnesty Scheme, 2020. As per the Amnesty Scheme, every assessee who had pending arrears or disputes could exercise their option under the scheme till 31-07-2020 and if the option was accepted, time was available till 31-03-2021, to pay the amounts due under the amnesty scheme. The said timeline to exercise the option was later extended till 31-11-2020. Further, in cases where the demand of tax was generated after 31-11-2020, the assessees were given an opportunity to exercise their option to claim the benefit of the amnesty scheme within 30 days from the date of receipt of the order and the payments were to be made by 31-03-2021.

5. Revised penalty order was issued only on 24-11-2020, while the modified assessment order was issued only on 27-01-2021, that too, after repeated promptings by the petitioner. To avail the benefit of the Amnesty Scheme 2020, petitioner even withdrew the appeal pending before the Value Added Tax Appellate Tribunal and attempted to file the application, exercising its option for amnesty. However, erroneously, petitioner’s application under the Amnesty Scheme 2020 was rejected stating that the time for filing the amnesty application was over by 30-11-2021. According to the petitioner, refusal to permit the petitioner to exercise its option attempted to be made within thirty days of receipt of the modified orders is contrary to law.

6. On the eve of the expiry of the time limit for making the payment under the Amnesty Scheme of 2020, petitioner sent an email communication to the second respondent along with a screenshot of the web portal evidencing the rejection of petitioner's application, alleging expiry of time. In spite of all the above, according to the petitioner, the respondents could not resolve the technical issues in the web portal and therefore petitioner could not claim the benefit of the Amnesty Scheme 2020.

7. According to the petitioner, in the meantime the Amnesty Scheme 2021 was brought in, giving options to the dealers to exercise their option under the scheme before 31-08-2021 and to make the payment before 31-03-2022. Petitioner contends that the benefit under the Amnesty Scheme 2021 is

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/color-homes-appellant-hash-state-…

prejudicial in comparison to the Amnesty Scheme under 2020 and had it not been for the technical issues of the web portal of the respondents, petitioner would not have been put to such prejudice, especially in the matter of quantum of payment liable under the Amnesty Schemes. As per the Amnesty Scheme 2020, petitioner could have cleared the entire liability by remitting an amount of 40% of the tax due, while under the Amnesty Scheme 2021, the amount liable to be paid is 60% of the tax due. Petitioner further alleged that the web portal of the respondents had not even been updated, and it reflects only the original assessment order and not the modified orders, thereby clearly evidencing the callous attitude of the respondents. It is in such circumstances the petitioner has approached this Court seeking directions for the grant of benefit under the Amnesty Scheme of 2020 after accepting the application submitted by the petitioner.

8. A counter-statement has been filed on behalf of the second respondent stating that the petitioner ought to have ensured that the modified demand and fresh assessment orders were uploaded and updated in the department's web portal in time. It was also pleaded that the fresh assessment order was communicated to the petitioner on 01-02-2021 and that though petitioner had communicated that it was facing some technical issues for filing the option under the Amnesty Scheme, other dealers had not complained of such experiences.

9. I have heard Sri. R.Jaikrishna, the learned counsel for the petitioner and Smt.M.M.Jasmin, the learned Government Pleader for the respondents.

10. By Ext. P8 letter dated 17-09-2020, petitioner had specifically intimated to the assessing officer that the Appellate Authority had directed the assessing officer to issue modified orders of penalty within two weeks. Petitioner had also pointed out that despite the lapse of five years, modified orders were not issued and since the petitioner intended to claim the benefit of the Amnesty Scheme of 2020, issuance of modified orders was urgent. It was thereafter that the second respondent issued a fresh assessment order on 27.01.2021 reducing the tax liability of the petitioner drastically. Since Ext.P13 modified assessment order was served on the petitioner only on 01-02-2021, a period of 30 days was available to the petitioner to claim the benefit of the Amnesty Scheme 2020. Accordingly, by letter dated 05-02-2021, petitioner sought to claim the benefit of the said Amnesty Scheme as per the request letter produced as Ext.P14. It is also pertinent to notice that petitioner had withdrawn the appeal pending before the KVAT Appellate Tribunal, as is evident from Ext.P15, wherein it was specifically mentioned that the appeal is being withdrawn to avail the benefit under the Amnesty Scheme.

11. Thereafter when the petitioner attempted to claim the benefit of the Amnesty Scheme, as evident from Ext.P16, petitioner was unable to log onto the Amnesty portal. Access was refused to the petitioner alleging that the time limit for filing the application for Amnesty Scheme had expired as is evident from Ext.P17. In Ext.P16 also, which was submitted on 12-02-2021, petitioner had pointed out

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/color-homes-appellant-hash-state-…

that it was denied access to the Amnesty portal.

12. From the records produced before this Court, it is evident that petitioner's access to the Amnesty portal was rejected/denied, contrary to the provisions of the Amnesty Scheme and therefore declining to accept and grant the benefit of the Amnesty Scheme 2020 to the petitioner is without any basis. Petitioner cannot be faulted for the denial of access. The system declined access to the petitioner, contrary to the terms of the scheme. If the error in the system was averted, petitioner would have been eligible to claim the option under the Amnesty Scheme 2020.

13. In view of the above, this Court holds that petitioner is entitled to the benefit of the Amnesty Scheme of 2020 and that the respondents were bound to accept petitioner's application exercising its option for the Amnesty Scheme 2020.

14. I, therefore, direct the second respondent to accept the exercise of option by the petitioner for the Amnesty Scheme 2020 and permit the petitioner to pay the entire amount either through the online method or in the physical mode, within 30 days from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/color-homes-appellant-hash-state-…