

(2025) 03 KL CK 1318

In the High Court Of Kerala

Case No : Other Tax Revision Nos.106 Of 2021, 24, 83 Of 2021, 56, 78 Of 2020, 4, 27, 94, 96 Of 2022, 60 Of 2023, 17, 18, 19 Of 2024, Writ Petition (C) Nos. 26397, 29776, 29832, 38813, 39332, 40647 Of 2016, 504, 765, 4707, 4724, 5725, 5797, 7550, 8661, 11352, 15486, 16939, 17953, 20086, 23044, 26625, 30399, 41131 Of 2017, 1902, 4001, 5142, 7405, 31398, 38559 Of 2018, 7917, 11146, 11448, 15508, 15940, 16368 Of 2019, 13295, 17593 Of 2020, 7167, 24169, 27800 Of 2021, 10639 Of 2024 & Writ Appeal No.1198 Of 2020

State Of Kerala

APPELLANT

Vs

Chowdhary Rubber & Chemicals Pvt. Ltd

RESPONDENT

Date of Decision : 18-03-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 265

Kerala Value Added Tax Act, 2003 — Section 21, 22, 24, 25, 25A, 25(1)

Citation : (2025) 03 KL CK 1318

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Easwaran S, J

Bench : Division Bench

Advocate : Mohammed Rafiq, P.S.Soman, T.Radhamony

Final Decision : Dismissed

Judgement

Dr. A.K. Jayasankaran Nambiar, J

1. In this batch of cases comprising of O.T. Revisions, Writ Petitions and Writ Appeal, the main issue that arises for consideration is whether notwithstanding the fact that the completion of an assessment under the Kerala Value Added Tax Act [hereinafter referred to as the "KVAT Act"] has become barred by limitation under Section 25(1) of the KVAT Act, the mere fact that a notice is issued by the Revenue invoking the provisions of Section 25A of the KVAT Act would enable the Revenue to complete a re-assessment by ignoring the period of limitation under Section 25(1) of the KVAT Act ?

2. While the O.T. Revisions preferred by the assessee impugned the orders of the

Appellate Tribunal that uphold the contention of the Revenue that re-assessment proceedings initiated under Section 25A of the KVAT are not subject to the limitation period prescribed under Section 25(1) of the KVAT Act, the O.T. Revisions and Writ Appeal preferred by the State impugn the orders of the Appellate Tribunal/Single Judge that reject the said contention of the Revenue. The writ petitions are preferred challenging notices/assessment orders that adopt the said view of the Revenue.

3. To appreciate the issue raised in these cases, it would be apposite to first notice the relevant statutory provisions under the KVAT Act. As per the Scheme of the KVAT Act, the assessment procedure commences with the filing of a return by the assessee. If the return filed by the assessee conforms to the requirements under the KVAT Act and Rules, in respect of the details of turnover to be furnished and the tax to be paid thereon, and there is no query raised by the Revenue within the period prescribed for the same, the assessment to tax is completed as a self assessment to tax by the assessee under Section 21 of the KVAT Act. If an assessee does not file a return as contemplated by the KVAT Act and Rules or files a defective return, then the assessment is completed on best judgment basis by the Revenue after following the procedure under Section 22 of the KVAT Act. In certain cases, as enumerated under Section 24 of the KVAT Act, an assessment can be completed pursuant to consideration of audit objections in relation to the details furnished by the assessee along with his returns. The assessments completed under Sections 21, 22 and 24 can still be re-opened in terms of Section 25 of the KVAT Act to assess such turnover as an escaped assessment to tax in an earlier assessment. The power to assess escaped turnover under Section 25 has, however, to be exercised within the period stipulated under the KVAT Act for the exercise of such power. The said period was five years from the end of the assessment year concerned till 31.03.2017 and was extended to six years from the end of the assessment year concerned thereafter. Section 25A of the KVAT Act is relevant for our purposes, and reads as follows:

"25A. Assessment of tax based on Audit Objections:-Notwithstanding anything contained in this Act, where an objection has been raised by the Comptroller and Auditor General of India in respect of an assessment or reassessment made or scrutiny of any return filed under this Act, and if the assessing authority is satisfied that such objection is lawful, the assessing authority shall proceed to re-assess the dealer or dealers with respect to whose assessment or re-assessment or scrutiny as the case may be, the objection has been made.

Provided that no order under the section shall be passed without giving the dealer an opportunity being heard."

As already noticed above, the main issue that arises for consideration is whether the Revenue can proceed to re-assess an assessee by placing reliance on a report of the Comptroller and Auditor General of India [CAG], by ignoring the period of limitation of five years/six years envisaged in Section 25(1) of the

KVAT Act.

4. We have heard Sri.A.Kumar, the learned senior counsel for the petitioners as also Sri.Mohammed Rafiq, the learned senior Government Pleader for the respondents.

5. The arguments of the learned counsel appearing for the assessee, briefly stated, is as follows:

? Section 25A begins with a non-obstante clause and empowers the Assessing Authority to rely on an additional ground, other than those contained in Section 25(1) of the KVAT Act, to determine whether or not to re-assess the assessee dealer. The non-obstante clause does not, however, dispense with the requirement of the Assessing Authority thereafter following the procedure under Section 25(1) of the KVAT Act, within the period of limitation prescribed therein to complete the fresh assessment.

? The correct interpretation of Section 25A would mandate that the Assessing Authority apply his mind to the audit objection raised by the CAG before arriving at a tentative decision to proceed against the assessee. He must then issue a notice to the assessee informing him of the proposal and take a final decision, after hearing him on whether or not to proceed with the re-assessment. Based on that decision, the Assessing Authority should then proceed to re-assess the assessee by following the procedure envisaged in Section 25(1) of the KVAT Act. In that event, he would also be bound by the provisions of limitation prescribed under Section 25(1) of the KVAT Act. Reliance is placed on the decisions in MCP Enterprises (M/s.) and Others v. State of Kerala and Others – [2020 (1) KHC 127]; State of Kerala and Others v. MCP Enterprises and Others – [MANU/KE/3470/2022]; The Assistant Commissioner (Assessment) & Others v. M/s. Chodayil Pvt. Ltd. - [2023 (9) TMI 801 (SC)]; The State of Kerala and Others v. Aditya Birla Nuvo Ltd. and Others – [MANU/KE/0711/2020]; Commissioner of Income Tax v. Orissa State Financial Corporation - [(1991) 99 CTR 0324]; IL & FS Investment Managers Ltd. v. Income Tax Officer & Others - [(2007) 209 CTR (Bombay) 1] and Reckitt Benckiser Healthcare India Private Limited v. Deputy Commissioner of Income Tax – [(2016) 96 CCH 0159 (Gujarat)].

6. Per contra, the contention of Sri.Mohammed Rafiq, the learned senior Government Pleader appearing on behalf of the Revenue, briefly stated, is as follows:

? Section 25A of the KVAT Act is a Code by itself. The satisfaction to be recorded by the Assessing Officer as regards the lawfulness of the objection raised by the CAG needs to be contained only in the notice that is issued to the assessee prior to completing the re-assessment against him. The submission, in other words, is that the entire process of assessment including the service of a notice, the grant of an opportunity of hearing and the passing of the re-assessment order have to be read in to the provisions of Section 25A of the KVAT Act even in the absence of an express provision dealing with such a procedure. It is his further

submission that the reference to an "order" in the proviso to the Section is essentially a reference to the final re-assessment order that is to be passed by the Assessing Officer.

? Elaborating on the scope and purport of Section 25A of the KVAT Act, it is the submission of the learned Government Pleader that under normal circumstances, the CAG report is one that is received by the Revenue at a later point in time after the initial assessment in relation to an assessee is completed. According to him, it is with a view to prevent an evasion of tax on account of the efflux of the time limit granted for exercise of power under Section 25(1) of the KVAT Act, that Section 25A was introduced through the Kerala Finance Act, 2012 by deliberately refraining from prescribing a time limit for the exercise of power under that Section. His contention, in other words, is that it is precisely when an Assessing Authority is otherwise incapacitated on account of the limitation provision under Section 25(1) that Section 25A comes to his rescue and empowers him to complete a fresh assessment against an assessee without being bound by any time limit for the exercise of the power.

? It is submitted that while the phrase "any reason" under Section 25(1) of the KVAT Act can take in even a change of opinion by the Assessing Officer and consequently, a mere change of opinion by the Assessing Officer can form the basis of a re-assessment of escaped turnover under Section 25(1) of the KVAT Act". Since the word "re-assess" includes every aspect of assessment, the provisions of Section 25A ensure that so long as an initiation of proceedings under Section 25A is undertaken, the completion of the assessment can happen at any time even beyond the period of five years/six years prescribed under Section 25(1) of the KVAT Act. Reliance is placed on the decisions in *Indian Aluminium Cables Ltd. v. Excise and Taxation Officer* – [(1977) 1 SCC 120]; *Geo Sea Foods v. Additional Sales Tax Officer IV, Second Circle, Kochi* – [(2006) 144 STC 553]; *Betty Sebastian v. Assistant Commissioner* – [(2018) 59 GSTR 275]; *Commissioner of Sales Tax v. Ramdas Laxmidas* – [1976 SCC OnLine Bom 255]; *Ramdas Laxmidas v. CST*– [1995 Supp (3) SCC 673]; *Assistant Commissioner (Assessment) v. Grasim Industries Ltd.* - [2006 (1) KLT 821]; *Sri. Kottureswara Rice & Oil Mills v. State of Karnataka* – [(1988) 71 STC 356]; *Harison & Co. v. Additional Commissioner of Commercial Taxes, Belgaum* – [(2006) 146 STC 609]; *Ispat Industries Ltd. v. Commissioner of Customs* – [(2006) 12 SCC 583]; *State of Kerala v. MCP Enterprises* – [2022 SCC OnLine Ker 6640]; *State of H.P. v. Goel Bus Service* – [(2023) 16 SCC 210] and *Nahasshukoor v. Assistant Commisioner, Second Circle, Alappuzha & Others* – [(2024) 123 GSTR 44 (Ker)] .

7. We have considered the rival submissions. The issue that essentially arises for consideration is as to where Section 25A of the KVAT Act fits in the Scheme of assessment under the KVAT Act ? As observed in *Sales Tax Officer and Another v. Messrs Sudarsanam Iyengar and Sons* – [(1969) 2 SCC 396], assessment is a comprehensive word that denotes the entirety of proceedings which are taken with regard to it. Under the Scheme of the KVAT Act, the assessment procedure

commences with the filing of a return by the assessee. If the return filed by the assessee conforms to the requirements under the KVAT Act and Rules, in respect of the details of turnover to be furnished and the tax to be paid thereon, and there is no query raised by the Revenue within the period prescribed for the same, the assessment to tax is completed as a self assessment to tax by the assessee under Section 21 of the KVAT Act. If an assessee does not file a return as contemplated under the KVAT Act and Rules or files a defective return, then the assessment is completed on best judgment basis by the Revenue after following the procedure under Section 22 of the KVAT Act. In certain cases, as enumerated under Section 24 of the KVAT Act, an assessment can be completed pursuant to consideration of audit objections in relation to the details furnished by the assessee along with his returns. The assessments completed under Sections 21, 22 and 24 can still be re-opened in terms of Section 25 of the KVAT Act to assess such turnover as escaped assessment to tax in an earlier assessment. The power to assess escaped turnover under Section 25 has, however, to be exercised within the period stipulated under the KVAT Act for the exercise of such power. The said period was five years from the end of the assessment year concerned till 31.03.2017 and was extended to six years from the end of the assessment year concerned thereafter.

8. Section 25A begins with a non-obstante clause, and it provides for nothing more than an additional ground on which the power to re-assess can be exercised by the Assessing Authority. The scope of that power can be gathered from the words used in the provision to define it. It is a power to proceed to re-assess the dealer and the power is to be exercised only if the Assessing Officer is satisfied that the objection raised by the CAG is lawful. It is in the backdrop of the above analysis of the power conferred under the Section that we must look for the meaning of the words "order passed" that appear in the proviso to the said Section. In our view, the order passed must necessarily be taken as a reference to the expression of satisfaction of the Assessing Officer, as to whether or not the objection raised by the CAG is lawful. Further, that satisfaction of the Assessing Officer must be one that is arrived at only after affording the dealer an opportunity of being heard.

9. It is also significant that Section 25A does not set out in detail the procedure to be followed for the re-assessment that must ensue if the Assessing Officer decides that the objection of the CAG is lawful. That procedure is spelt out only in Section 25(1) of the KVAT Act. The contention of the Revenue that Section 25A also provides for the procedure for re-assessment cannot be accepted, not only because the provision itself does not say so, but also because procedural due process in a taxing statute cannot be inferred but must necessarily find a place in the statute itself. Article 265 of the Constitution clearly mandates that there shall be no levy or collection of tax save by authority of law. In our view, therefore, once the Assessing Officer arrives at the satisfaction envisaged under Section 25A, he has to proceed to re-assess the dealer in the manner envisaged under the Statute, namely, by following the procedure under Section 25(1) of the KVAT

Act. In that process, he must also ensure that the substantive safeguards envisaged for an assessee, such as the requirement of exercising the power within the time permitted by the Statute, are strictly adhered to.

10. The 'law', for the purposes of Article 265, must also be one that satisfies the requirements of being just, fair and reasonable so as to be compatible with Articles 14, 19 and 21 of the Constitution of India. To permit the Revenue to exercise the power of assessment and recovery of tax, without circumscribing the said power with a period of limitation for its exercise, would tantamount to ignoring the very fundamentals of the Rule of Law and the principles of fairness in taxation that form an integral aspect of it. We are therefore of the view that there cannot be an exercise of power under Section 25A of the KVAT Act beyond the period of limitation prescribed under Section 25(1) of the KVAT Act. In fact the provisions of Section 25A allude to this aspect when it refers to the satisfaction to be recorded by the Assessing Officer of the "lawfulness" of an audit objection. In our view, one of the aspects of lawfulness would also be the date by which the audit objection is communicated by the CAG. If the audit objection is received at a point in time that is beyond the period of limitation envisaged for re-assessment under Section 25(1) of the KVAT Act, then the Assessing Officer cannot treat the said objection as 'lawful' for the purposes of exercise of his power under Section 25A of the KVAT Act.

11. We thus hold that in cases where the completion of an assessment under the KVAT Act has become time barred by virtue of the limitation provisions under Section 25(1) of the KVAT Act, the Revenue cannot proceed to re-assess an assessee on the basis of a subsequent report obtained from the CAG.

12. The O.T. Revisions are thus disposed by answering the questions of law raised in the O.T. Revisions in line with the above finding. The Writ Appeal preferred by the State [W.A.No.1198 of 2020] is also dismissed based on the said finding. As for the writ petitions, they are disposed by quashing the impugned notices/proceedings that have been issued/passed in breach of the limitation provision under Section 25(1) of the KVAT Act and granting the petitioners the consequential reliefs flowing from the above declaration of law.

13. Before parting with these cases, we may clarify that in the case of W.P.(C).No.29832 of 2016, which impugns the assessment orders passed for the assessment years 2009-10 to 2013-14, the findings in this judgment will suffice to quash the order passed for the assessment year 2009-10 alone since it is apparent that the assessment orders for the years 2010-11 to 2013-14 were passed within the period of limitation prescribed under Section 25(1) of the KVAT Act. Accordingly, the writ petition is allowed to the extent it pertains to assessment year 2009-10, but is dismissed to the extent it pertains to assessment years 2009-10 to 2013-14.

14. In the case of W.P.(C).No.5725 of 2017, which impugns the assessment orders passed for the assessment years 2009-10 to 2013-14, the findings in this

judgment will suffice to quash the orders passed for the assessment years 2009-10 and 2010-11 alone since it is apparent that the assessment orders for the years 2011-12, 2012-13 and 2013-14 were passed within the period of limitation prescribed under Section 25(1) of the KVAT Act. Accordingly, the writ petition is allowed to the extent it pertains to assessment years 2009-10 and 2010-11, but is dismissed to the extent it pertains to assessment years 2011-12, 2012-13 and 2013-14.

15. Similarly, in W.P.(C).No.5797 of 2017 where the notices issued to the assessee for the assessment years 2009-10 to 2012-13 are impugned, we are informed that the notices for the years 2011-12 and 2012-13 were issued within the period of limitation prescribed under Section 25(1) of the KVAT Act. Accordingly, the finding in this judgment shall apply to quash only those notices which pertain to the assessment years 2009-10 and 2010-11 that are impugned in the said writ petition and the writ petition allowed to that extent. In relation to the other notices that are impugned in the writ petition namely, for the assessment years 2011-12 and 2012-13, the writ petition shall stand dismissed.

In the case of W.P.(C).No.41131 of 2017, which impugns the assessment orders passed for the assessment years 2011-12 to 2013-14, the findings in this judgment will suffice to quash the orders passed for the assessment year 2011-12 alone since it is apparent that the assessment orders for the years 2012-13, 2013-14 and 2014-15 were passed within the period of limitation prescribed under Section 25(1) of the KVAT Act. Accordingly, the writ petition is allowed to the extent it pertains to the assessment year 2011-12, but is dismissed to the extent it pertains to assessment years 2012-13 and 2013-14.