

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 15TH DAY OF FEBRUARY 2022 / 26TH MAGHA, 1943

WP(C) NO. 26301 OF 2021

PETITIONER:

NICO TILES
MADHAVAM, PANNOLY PARAMBA,
KOZHIKODE, KOTTOOLI,
KOZHIKODE 673 016
REPRESENTED BY ITS MANAGING PARTNER,
SRI. MADHU MENON.

BY ADVS.
M.K.HAJARA
C.RAMACHANDRAN

RESPONDENTS:

- 1 THE STATE TAX OFFICER,
STATE GOODS AND SERVICE TAX DEPARTMENT,
MINI CIVIL STATION, MANJERI-676 121.
- 2 THE JOINT COMMISSIONER (APPEALS)
STATE GOODS & SERVICES TAX DEPARTMENT,
PALAKKAD-678 014.
- 3 THE COMMISSIONER OF STATE TAXES
TAX TOWER, KILLIPPALAM,
KARAMANA P.O.,
THIRUVANANTHAPURAM-695 002.

ADV. DR.THUSHARA JAMES, SR.GOV'T. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.01.2022, THE COURT ON 15.02.2022 DELIVERED
THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C) No.26301 of 2021

Dated this the 15th day of February, 2022

JUDGEMENT

Petitioner challenges a series of monthly assessment orders issued under section 62 of the Central Goods and Services Tax Act, 2017 (for short, 'the Act'). As per the impugned orders of assessment, produced as Ext.P3 and Ext.P3(a) to Ext.P3(r), it was stated that petitioner having failed to furnish returns in spite of notice under section 46 of the Act, assessments have been carried out for the respective periods.

2. The tax periods involved in Ext.P3 and Ext.P3(a) to Ext.P3(r) are for the period from November, 2017 to May, 2019. According to the petitioner, the assessment orders issued under section 62 of the Act are illegal, warranting an interference by this Court, since petitioner had requested cancellation of registration with effect from 31.12.2017 and that the assessment orders were issued ignoring the said request. Petitioner also alleged that, based on the request of the petitioner for cancellation of registration, the Proper

Officer had cancelled the registration by Ext.P6 effective from 31.12.2017 and hence issuing Ext.P3 and Ext.P3(a) to Ext.P3(r) assessment orders for the period November, 2017 to May, 2019 are without authority.

3. I have heard Smt.M.K.Hajara, learned counsel for the petitioner as well as Dr.Thushara James, learned Senior Government Pleader for the respondents.

4. A perusal of Ext.P6 order of cancellation of registration of the petitioner shows that the effective date of cancellation of registration is stipulated as 31.12.2017. However, the application for cancellation was submitted only after Ext.P3 and Ext.P3(a) to Ext.P3(r) assessment orders were issued. Apart from the above, petitioner has already preferred appeals before the Appellate Authority under section 107 of the State Goods and Services Tax Act, as evident from Ext.P4, challenging the order of assessment. After filing the appeal, which mandates a pre-deposit of 10%, a defect was pointed out that petitioner had not deposited the mandatory pre-deposit. Petitioner contended that since the order of cancellation of registration issued on 19.03.2021 enabled the petitioner to have his entire assessment orders set aside, the mandatory pre-deposit, if

paid, would cause prejudice to the petitioner, especially since the petitioner will stand to lose the court fee payable on the appeal.

5. Ext.P4 appeal was preferred by the petitioner as early as on 11.03.2020. Once the petitioner undertakes the remedy of a statutory appeal under section 107 of the Act, petitioner cannot thereafter turn around and approach this Court seeking reliance upon subsequent events, to avoid the mandatory pre-deposits. Such a practice, if permitted, would render the provisions of the statute redundant. The liability to make the pre-deposit befalls on the date of filing of the appeal, i.e., 11.03.2020 in the instant case. The said liability cannot be eschewed from reckoning on the basis of subsequent events, which as claimed by the petitioner to be beneficial to it. The subsequent events can, at the most, be utilised for availing the appropriate benefits while the appeal is considered on merits but not to overcome the mandate of pre-deposit under section 107 of the Act.

6. In view of the above consideration, this Court is of the view that since the petitioner had already invoked the appellate remedy, the said appeal ought to be pursued as contemplated by law. The remedy of Article 226 of the Constitution of India being extra ordinary,

I do not find the existence of any circumstances warranting the invocation of the extra ordinary jurisdiction, after invoking such an appellate remedy.

Hence, this writ petition is dismissed.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF WP(C) 26301/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE RETURN IN FORM GSTR-3B FOR THE MONTH OF NOVEMBER 2017 (FOR THE YEAR 2017-18) FILED BY THE PETITIONER UNDER THE GST ACT.
- EXHIBIT P2 TRUE COPY OF THE RETURN IN FORM GSTR-3B FOR THE MONTH OF DECEMBER 2017 (FOR THE YEAR 2017-18) FILED BY THE PETITIONER UNDER THE GST ACT.
- EXHIBIT P3 TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF NOVEMBER DATED 22.10.2019 (2017-18) ISSUED BY THE IST RESPONDENT.
- EXHIBIT P3 (a) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF DECEMBER DATED 22.10.2019 (2017-18) ISSUED BY THE IST RESPONDENT.
- EXHIBIT P3 (b) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF JANUARY DATED 22.10.2019 (2017-18) ISSUED BY THE IST RESPONDENT.
- EXHIBIT P3 (c) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF FEBRUARY DATED 22.10.2019 (2017-18) ISSUED BY THE IST RESPONDENT.
- EXHIBIT P3 (d) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF MARCH DATED 22.10.2019 (2017-18) ISSUED BY THE IST RESPONDENT.
- EXHIBIT P3 (e) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF APRIL DATED 22.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.
- EXHIBIT P3 (f) TRUE COPY OF THE ASSESSMENT ORDER IN

FORM GST ASMT-13 FOR THE MONTH OF MAY DATED 22.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.

EXHIBIT P3 (g) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF JUNE DATED 22.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.

EXHIBIT P3 (h) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF JULY DATED 22.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.

EXHIBIT P3 (i) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF AUGUST DATED 22.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.

EXHIBIT P3 (j) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF SEPTEMBER DATED 23.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.

EXHIBIT P3 (k) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF OCTOBER DATED 23.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.

EXHIBIT P3 (l) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF NOVEMBER DATED 23.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.

EXHIBIT P3 (m) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF DECEMBER DATED 23.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.

EXHIBIT P3 (n) TRUE COPY OF THE ASSESSMENT ORDER FOR THE MONTH OF JANUARY DATED 23.10.2019 (2018-19) ISSUED BY THE IST RESPONDENT.

EXHIBIT P3 (o) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF FEBRUARY DATED 23.10.2019 (2018-19)

ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P3 (p) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF MARCH DATED 23.10.2019 (2018-19) ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P3 (q) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF APRIL DATED 24.10.2019 (2019-20) ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P3 (r) TRUE COPY OF THE ASSESSMENT ORDER IN FORM GST ASMT-13 FOR THE MONTH OF MAY DATED 24.10.2019 (2019-20) ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P4 A TRUE COPY OF THE APPEAL FILED FOR THE MONTH OF DECEMBER, 2017 DATED 11.3.20.

EXHIBIT P5 A RUE COPY OF THE FORM FOR RETURNING DEFECTIVE APPEAL PETITIONS AS PER SECTION 107 OF SGST ACT ISSUED BY 2ND RESPONDENT DATED 29.10.2021.

EXHIBIT P6 TRUE COPY OF THE ORDER FOR CANCELLATION OF REGISTRATION IN FORM GST REG-19 DATED 19.3.2021.