



ST.Rev.No.31 of 2019

2025:KER:70638

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 23RD DAY OF SEPTEMBER 2025 / 1ST ASWINA, 1947

ST.REV.NO.31 OF 2019

AGAINST THE ORDER DATED 06.02.2019 IN TA NO.88 OF 2017 OF
S.T.A.T.ADDITIONAL BENCH, ERNAKULAM

REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA, REP. BY DEPUTY COMMISSIONER (LAW),
KERALA GST DEPARTMENT, ERNAKULAM.

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

RESPONDENT/APPELLANT/ASSESSEE:

RENJITHA SATHYAN,
WORKS CONTRACTOR, 37/407. RAKHI,
TEMPLE ROAD, KADAVANTHRA, KOCHI -682 026.

BY ADVS.
SHRI.K.J.ABRAHAM
SRI.NIKHIL JOHN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 18.09.2025, THE
COURT ON 23.09.2025 DELIVERED THE FOLLOWING:



"C. R."

ORDER**Harisankar V. Menon, J.**

This Sales Tax Revision Petition, at the instance of the revenue, seeks to challenge the order dated 06.02.2019 in T.A. No. 88 of 2017, of the Kerala Sales Tax Appellate Tribunal, Additional Bench, Ernakulam, setting aside the assessment of the respondent-assessee for the year 2003-04 as barred by limitation.

2. The assessment of the respondent-assessee, was initiated pursuant to a pre-assessment notice dated 10.06.2010 and completed *ex-parte* on 18.08.2010. The first appeal was unsuccessful. In the second appeal, the Tribunal, by the impugned order, found that the assessment ought to have been finalised within the period prescribed under Section 17(6) of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as the 'KGST Act' for short), and insofar



as it is not so done, the appeal was allowed. The Tribunal also relied on the principles laid down by a learned Single Judge of this Court in the judgment dated 27.11.2015 in W.P.(C) No.11049 of 2012. It is in such circumstances that this Sales Tax Revision Petition is filed by the revenue.

3. Heard Sri.V.K.Shamsudeen, the learned Senior Government Pleader for the petitioner-revenue, and Sri.K.J.Abraham, the learned counsel for the respondent-assessee.

4. The main contention raised by the learned Senior Government Pleader is to the effect that the extension carried out by the Kerala Finance Acts, 2009 and 2010, are applicable to the case at hand. He would contend that the assessment proceeding, having been initiated as well as finalised within the extended period of time as above, the findings of the Tribunal were incorrect. *Per contra*, the counsel for the respondent-assessee would contend that the extension as above was not



applicable. He would also add that even the assessment completed was without any justification, insofar as there was no proper service of pre-assessment notice prior to finalisation of the assessment.

5. We have considered the rival submissions. The question of law as reframed by us, arising for consideration in this Sales Tax Revision Petition, is:

Whether on the facts and in the circumstances of the case, Annexure A assessment order for the year 2003-04 is passed within the period prescribed under Section 17(6) of the Act, as amended by the Kerala Finance Act, 2009, and the Finance Act, 2010?

6. The issue, as noticed earlier, is as to whether the assessment completed for the year 2003-04 is within the period prescribed under Section 17(6) of the Act. The provisions of the Act provide for finalisation of assessment under Section 17(3), which reads as under:

Sec.17 (3) "If no return is submitted by the dealer under sub-section (1) within the prescribed period, or if the



return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its judgment:"

Therefore, an assessment requires to be taken up when:

- i. No return is submitted by a dealer; or
- ii. If the return appears to be incorrect/ incomplete,

Originally, there was no time limit prescribed under the Statute for either initiation of the assessment or finalisation, as above. For the first time, limitation was introduced in the Statute by insertion of sub – section (6) by the Kerala Finance Act, 1993, with effect from 01.04.1993. The period for such finalisation was "4 years" originally, and later enhanced to "5 years" with effect from 31.03.2002. Applying the above, as regards the assessment year 2003-04, the assessment ought to have been completed at least by 31.03.2009. It is not in dispute



that the assessment in the case at hand has not been initiated or finalised within the above period.

7. In such circumstances, with reference to the provisions of Section 17(6) of the Act, as it stood till 31.03.2009, there is no dispute that the assessment completed against the respondent was time barred.

8. However, it is the submission of the learned Senior Government Pleader that the provisions of the Kerala Finance Acts of 2009 and 2010 gain significance herein, and the department is entitled to finalise the assessments. True, by the Kerala Finance Act, 2009, the fourth proviso to sub-section (6) was substituted by adding a fresh proviso with an explanation, which reads as under:

“Provided also that the assessment relating to the years up to and including the year 2004-05 pending as on 31st March, 2009 shall be completed on or before the 31st day of March, 2010.



Explanation:- For the purpose of the above proviso, it is clarified that the extension of time granted for completion of assessments is applicable in all cases where regular assessments have not been completed before the date fixed for completion of assessment in the respective years.”

9. By the Finance Act, 2010, the fourth proviso and the explanation added as above were further substituted by the insertion of two provisos as under:

“Provided also that the assessment to the years upto and including the year 2004-05 pending as on 31st March, 2010 shall be completed on or before the 31st day of March, 2011 :

Provided further that in cases where any assessment completed under this Act has been reopened with the permission of the Commissioner, the time limit mentioned in Section 19 shall not apply.”

The stand of the revenue is that by the proviso as substituted by the Kerala Finance Act, 2009, all assessments up to and including the year 2004-05 pending as on 31.03.2009 could be completed by 31.03.2010. So, the learned Senior Government Pleader submits that since the assessment was pending as on



31.03.2009, revenue got a lease of life till 31.03.2010. He also relies on the explanation inserted as above to support the afore submission. On the face of the afore lease of life, it is his further submission that the extension by the Kerala Finance Act, 2010, entitles completion of assessment by 31.03.2011. He concludes his submission by pointing out that, since the assessment had been initiated and finalised within that time, the findings of the Tribunal were incorrect. In support of his submission as above, he also relied on the judgment of the Apex Court in **Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur and Others [(1963) 14 STC 976]** to contend that once a return is filed, the proceedings before the assessing authority commence and such proceedings are held to be pending before the officer till such time an appropriate assessment order is issued.

10. At the first blush, the afore submission made by the learned Senior Government Pleader appears to be attractive. This is because the Apex Court in **Ghanshyamdas** (*supra*) has held



that “the submission of a statutory return would initiate the proceedings and that the proceedings would be pending till a final order of assessment was made on the said return”.

11. However, we notice that the Apex Court, in the afore decision, was considering four variations in the matter of assessment of a registered dealer. The variations have been noticed by the Apex Court as under:

“(1) He submits a return by the date proscribed and pays the tax due in terms of the said return; the Commissioner accepts the correctness of the return and appropriates the amount paid towards the tax due for the period covered by the return. (2) The Commissioner is not satisfied with the correctness of the return: he issues a notice to him under section 11(2) and makes an enquiry as provided under the Act, but does not finalize the assessment. (3) The registered dealer does not submit a return; the Commissioner issues a notice under section 10(3) and section 11(4) of the Act. And (4) the registered dealer does not submit any return for any period and the Commissioner issues notice to him beyond three years.”



The treatment to be effected by the assessing authority on the above variations and the question arising for consideration has been laid down by the Apex Court as under:

“If the return was accepted and the amount paid was appropriated towards the tax due for the relevant period, it means that there has been a final assessment in regard to the said period. If any turnover escaped assessment, clearly it can be reopened only within the period prescribed in section 11-A. In the case where a return has been made, but the Commissioner has not accepted it, and has issued a notice for enquiry, the assessment proceedings will certainly be pending till the final assessment is made. Even in a case where no return has been made, but the Commissioner initiated proceedings by issuing a relevant notice either under section 10(3) or under section 11(4), the proceedings will be pending thereafter before the Commissioner till the final assessment is made. But where no return has been made and the Commissioner has not issued any notice under the Act, how can it be held that some proceedings are pending before the Commissioner when none existed as a matter of fact? We are concerned in this case with the last contingency.”



In the case at hand, a perusal of Annexure-A assessment order shows that the respondent-assessee had not filed any returns during the year under assessment. Therefore, the case of the respondent-assessee cannot be stated to be falling under the first or second variation noticed by the Apex Court, as above. The case of the assessee herein would fall under variation numbers 3 and 4, as noticed by the Apex Court.

12. With respect to variation under the fourth situation, the question as above has been answered as under by the Court:

“It is manifest that in the case of a registered dealer the proceedings before the Commissioner starts factually when a return is made or when a notice is issued to him either under section 10(3) or under section 11(2) of the Act. The acceptance of the contention that the statutory obligation to file a return initiates the proceedings is to invoke a fiction not sanctioned by the Act. The obligation can be enforced by taking a suitable action under the Act. Taking of such an action may have the effect of initiating proceedings against the defaulter. The default may be the occasion for initiating the proceedings, but the default itself *proprio vigore* cannot initiate proceedings. Proceedings in respect of the



assessment of the turnover for the relevant period cannot, therefore, be said to be pending before the Commissioner.”

In the light of the afore, the interpretation suggested by the learned Senior Government Pleader, placing reliance on the judgment of the Apex Court in **Ghanshyamdas** (*supra*) and the Kerala Finance Acts of 2009 and 2010, does not appear to be correct. Applying the law laid down by the Apex Court in **Ghanshyamdas** (*supra*) in a case where no return is filed by a dealer, merely because the dealer had a duty to file the return, it cannot be said that the proceedings were initiated on account of the default. It is only when a notice is issued in accordance with the law, it can be said that the proceedings are initiated.

13. Viewed in the light of the above proposition; as on 31.03.2009 and 31.03.2010, the proceedings have not been initiated against the respondent assessee to contend that they were “pending”. When that be so, we are of the opinion that the revenue would not be entitled to place reliance on the provisions



under Section 17(6) of the Act, as amended by Finance Acts, 2009 and 2010.

Resultantly, we are of the opinion that the conclusions arrived at by the Tribunal cannot be said to be incorrect or arbitrary, warranting interference from our end. We find no reason to interfere, and hence, this Sales Tax Revision Petition stands dismissed, answering the question framed as above, against the revenue and in favour of the assessee.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE

Skk/ln



APPENDIX OF ST.REV. 31/2019

PETITIONER'S ANNEXURES:

- ANNEXURE A A TRUE COPY OF ASSESSMENT ORDER UNDER SECTION 17(3) OF K.G.S.T.ACT DATED 18/08/2010 FOR YEAR 2003-04 BY THE ASSISTANT COMMISSIONER, K VAT WORKS CONTRACT, ERNAKULAM.
- ANNEXURE B A TRUE COPY OF THE ORDER DATED 31/08/2017 IN STA NO.534 OF 2011.
- ANNEXURE C CERTIFIED COPY OF THE ORDER OF THE TRIBUNAL IN T.A.NO.88 OF 2017 DATED 06/02/2019.