

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HON'BLE THE CHIEF JUSTICE DR. MANJULA CHELLUR  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 20TH DAY OF FEBRUARY 2014/1ST PHALGUNA, 1935

ST.Rev.No. 78 of 2012

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[AGAINST THE ORDER OF THE KERALA AGRL. INCOME TAX AND  
SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, PALAKKAD  
IN T.A. NO.57 OF 2011]

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REVISION PETITIONER/ASSESSEE:

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K.ABDULLA,  
MANAGING PARTNER,  
EX-SWARNA TRADERS, MANJERI.

BY ADVS.SRI.M.V.THAMBAN,  
SRI.R.REJI,  
SMT.THARA THAMBAN,  
SRI.B.BIPIN.

RESPONDENT:

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STATE OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BOBBY JOHN.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION  
ON 20-02-2014, ALONG WITH S.T.REV. NOS.79/2012 AND 80/2012,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Prv.

**S.T.REV. NO.78/2012:**

**APPENDIX**

**PETITIONER'S ANNEXURES:**

- ANNEXURE- I:** TRUE COPY OF THE ASSESSMENT ORDER DATED 25/01/2010 FOR 1987-88.
- ANNEXURE-II:** TRUE COPY OF THE ORDER IN FIRST APPEAL AS S.T.A. NO.109/2010.
- ANNEXURE-III:** TRUE COPY OF THE JUDGMENT DATED 06/11/1990 IN O.P. NO.9074/1990.
- ANNEXURE-IV:** TRUE COPY OF THE JUDGMENT DATED 07/07/1999 IN O.P. NO.5868/1999.
- ANNEXURE-V:** TRUE COPY OF THE JUDGMENT DATED 05/07/2000 IN O.P. NO.18758/2000.
- ANNEXURE-VI:** TRUE COPY OF THE JUDGMENT DATED 15/12/2004 IN W.P.(C).NO.21149/2000.
- ANNEXURE-VII:** TRUE COPY OF THE APPEAL OF THE SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH AT PALAKKAD FOR THE YEAR 1887-1888.
- ANNEXURE-VIII:** TRUE COPY OF THE ORDER DATED 12/01/2012.
- ANNEXURE IX:** TRUE COPY OF THE NOTICE OF SALE OF IMMOVABLE PROPERTY UNDER SECTION 49 (2) OF THE KERALA REVENUE RECOVERY ACT DATED 06/06/2012.

**RESPONDENT'S ANNEXURES: NIL.**

**//TRUE COPY//**

**P.A. TO JUDGE.**

**Prv.**

**Manjula Chellur, C.J. & A.M. Shaffique, J.**

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S.T.Rev. Nos. 78, 79 & 80 OF 2012  
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Dated this the 20<sup>th</sup> day of February, 2014

**JUDGMENT**

**Manjula Chellur, C.J.**

Heard learned counsel appearing for petitioner as well as learned Government Pleader. These three revision petitions pertain to assessment years 1987-88, 1988-89 and 1989-90. According to revision petitioner, the petitioner was running a provision store in the name and style of "Swarna Traders" at Manjeri from 1984 onwards.

2. For various reasons petitioner had to close said provision store with effect from 11.04.1997 and he attributes the said closure to the continuous harassment by the respondent-Department officials. He also brought on record the earlier litigation pertaining to these three assessment years. He contends that once the assessment orders were set aside in an appeal by the appellate authority with a specific direction to proceed further only after perusal of the books of accounts, thereafter, the officials of the Department attempted to verify books of accounts and, according to him, such books might have been misplaced by officials concerned.

3. Petitioner also places reliance on Annexure VI judgment in O.P. No. 21149 of 2000 to contend that there was a direction to the assessing officer to verify the books of accounts and even fixed a hearing date as 15.01.2005. This also came to be defied by the officials and only after lapse of 5 years, on 25.01.2010, without verifying the accounts maintained by the petitioner, the assessing authority made additions in the orders of assessment which became subject matter of dispute before the appellate Tribunal. Appellate Tribunal rejected the claim of the petitioner and against the said order of the appellate Tribunal, the revision petitioner is before this Court contending that for the last 25 years, the department officials rejected the major contentions raised by the assessee but to a considerable extent additions were reduced.

4. So far as deduction of additions made by the assessing authority, the Department is not before us. Therefore, we have to consider the request in the above said background. According to petitioner, the main defence is, assessment orders dated 25.01.2010 by the assessing officer is beyond period of

limitation as contemplated under Section 17(8) of Kerala General Sales Tax Act.

5. As against this, learned Government Pleader brought to our notice various contentions raised by the petitioner at different stages and also the fact that subsequent to remand of the matter by virtue of the orders of Tribunal in S.T.A Nos.357 & 358/98 and 285/99. According to Revenue, subsequent to remand by the Tribunal way back in 1999, assessee never co-operated with the Department. Therefore there has to be an order of assessment which led to revenue recovery as well. According to learned Government Pleader, this revenue recovery proceedings came to be challenged in O.P. No.21149 of 2000 which came to be disposed of on 15.12.2004.

6. As per the directions of High Court in the above said Original Petition, party was required to appear before the authority on 15.01.2005. Therefore, by virtue of sub-section (8) of Section 17 of KGST Act, the time within which assessment could have been completed was 4 years which would be 31.03.2008. According to him, by virtue of extension of time

every year by Finance Act, Department had time to pass assessment orders pertaining to the additional periods up to 25.01.2010. Hence none of the orders are hit by provisions of Section 17(8) of KGST Act, therefore there is no justification in the contentions raised by the petitioner.

7. In order to consider the legal controversy raised by the party, one has to see what exactly sub-section (8) of Section 17 connotes which reads as under:

**"17. Procedure to be followed by the assessing authority.-**

XX XX XX XX

(8) Any assessment or reassessment in pursuance of an order of appellate or revisional authority shall, be completed within a period four years from the expiry of the year in which the order was received.

Provided that all such assessments or reassessments pending as on the 1<sup>st</sup> day of April, 1993 shall be completed on or before the 30<sup>th</sup> day of September, 1998."

8. It is not in dispute that S.T.A. Nos.357 and 358 of 1998 pending before the first appellate authority pertain to assessment year 1988-89 and 1989-90. First appellate authority disposed of the same on 22.01.1999 by common order. S.T.A.

No.285/99 pertains to assessment year 1987-88 which came to be disposed of on 27.05.1999. According to learned counsel for petitioner, if end of the financial year is taken into consideration from the date of 31.03.2000, 4 years would be 31.03.2004, therefore there was no authority for proceeding with the assessment in question as orders in question are made on 25.01.2010, therefore they are not sustainable.

9. We have gone through the entire file even pertaining to O.P. No.21149 of 2000 which came to be filed subsequent to disposal of S.T.A. Nos.357 and 358 of 1998 and S.T.A. No.285/99. Reading of the judgment in the above said OP produced as Annexure VI, it is very clear that the assessee approached this Court challenging revenue recovery proceedings. As a matter of fact in the first paragraph of the judgment learned Judge clarifies the position. Ext.P2 referred to in the said OP judgment is series of appellate orders and prayer was to quash Exts.P11 and P11(a). As a matter of fact, learned Judge opines that petitioner virtually has sought for quashing revenue recovery proceedings and the said demand notices are at Ext.P11 series.

As on the date of filing of Original Petition in 2000, subsequent to the remand by the first appellate authority on 22.01.1999 and 27.05.1999 as referred to above, there was an order of assessment which led to revenue recovery proceedings which became the subject matter of challenge before this Court in O.P. No.21149 of 2000. Therefore there is no need to compute the period of four years from 31.03.1999 and 31.03.2000 as contended by petitioner.

10. Whether petitioner took part in the assessment proceedings or not, we are not concerned at this stage. The fact remains, in 2000 there was already assessment orders subsequent to order of remand by first appellate authority which became the subject matter of challenge in the Original Petition along with the revenue recovery demand notices. After referring to various aspects of the matter, learned Judge of this Court while disposing of the above said Original Petition directed the petitioner to appear before Sales Tax Officer on 15.01.2005 giving opportunity to the petitioner to be heard by the officer and thereafter final orders shall be passed was the direction.



Therefore, what happened after 15.01.2005 is relevant with reference to sub-section (8) of Section 17 in order to understand whether assessment orders were passed within the four years as contemplated under the said provision. If 15.01.2005 were to be the direction by this Court, if that date is taken into consideration, 31.03.2005 would be the end of the financial year. Four years from 31.03.2005 would be 31.03.2009. Apparently the assessment orders are made on 25.01.2010. Whether there was any extension of time by virtue of any statutory provisions alone has to be seen.

11. Learned Government Pleader has placed before us the Finance Act of each year right from 2004 to 2009, bringing to Court's notice how the time was extended from 2004 onwards every year by respective Finance Act. This is by amending the provisos of Section 17(8) of the KGST Act. As a matter of fact subsequent to 2009 also such extension of time was considered by amending the proviso up to 2013. We are not concerned with the period beyond 2009, as the extension of time by virtue of 2009 Finance Act provides completion of pending assessments

including the year 2004-05 pending as on 31.03.2009 up to 31.03.2010. Such extension was granted every year by one financial year. Thus the last extension clearly indicates the Department had time up to 31.03.2010 to complete the assessments pending. So far as 2004 it says, all assessments pending as on 01.04.2004 would be completed on or before 31.03.2005. As on the date of appearance of the party before the assessing authority in terms of judgment Annexure VI, on 15.01.2005 he was directed to appear before the assessing officer.

12. Up to 15.12.2004, whether there was ex-parte assessment order or not is the question. Learned counsel appearing for the petitioner brought to our notice the observations in Annexure VI judgment. After going through the entire judgment what we notice was, on 11.02.2000 an order of assessment was made. Meanwhile, without referring to that O.P. No.13758 of 2000 came to be filed which came to be disposed of on 05.07.2000 giving certain directions to the Department to proceed with the matter after verifying the account books. As a

matter of fact there was direction in October 2004 asking the assessee to produce the account books. What we notice is O.P. No.18758 of 2000 came up for admission and was disposed of on the very same day. Therefore, there was no possibility for the Department to place on record that on 11.02.2000 itself there was an order of assessment. What we notice is after 11.02.2000 when the assessee was not available for serving copy of the assessment order, it was even affixed on the last known address of the business place as contemplated under law. All these facts were brought to the notice of the Court at the time of disposal of O.P. No.21149 of 2000. After considering all these facts learned Judge opined that in the light of assessee not producing account books in October 2004 in response to the notice of the Department, the situation requires passing fresh orders of assessment and communicate the same to the petitioner as per the directions of the Court. Therefore, petitioner was asked to appear before the Sales Tax Officer on 15.01.2005.

13. In the above circumstances we are of the opinion, the period of 4 years cannot be computed as contended by

learned counsel appearing for the petitioner as there was an order of assessment as early as on 11.02.2000. Therefore, subsequent to disposal of O.P. No.21149 of 2000 alone, period of 4 years requires to be computed. In that view of the matter, if they were to appear on 15.01.2005, the financial year ends with 31.03.2005, 4 years has to be counted from that date and if extension of time by Finance Act of every year right from 2004 to 2013 are taken into consideration as on the date of proceedings with the assessment on 25.01.2010, there was extension of time available to the Department to proceed with the assessment. In that view of the matter, the assessment orders which became subject matter of challenge before the appellate Tribunal wherein orders were passed in accordance with Section 17(8) by virtue of extension of time granted every year by respective Finance Act.

14. In the light of Department not challenging additions, we need not consider any other controversy further. So far as assessment orders are concerned, the Tribunal based on the factual situation has clarified the entire matter and has given a big sigh of relief to the assessee, therefore, we

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find no good ground to interfere with the said assessment orders.

Accordingly, the Revision Petitions are dismissed.

**Manjula Chellur,  
Chief Justice.**

**A.M. Shaffique,  
Judge.**

tth/21/02