



W.P.C.20468/2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2020 / 8TH ASWINA, 1942

WP (C) .No.20468 OF 2020 (G)

PETITIONER/S :

MUHAMMED KOCHUKUDIYIL ISHABEEVI ALIAS ISHA
SHAEFI,
PROPRIETRESS NADIYA TIMBERS, W/O.K.M. SHAFI,
AGED 52, KOCHUKUDY HOUSE, VALARA P.O.,
ADIMALY VIA, IDUKKI DISTRICT 685 561.

BY ADV. SRI.K.M.FIROZ

RESPONDENT/S :

- 1 STATE TAX OFFICER (INTELLIGENCE) ,
SQUAD NO. IV, STATE GST DEPARTMENT, IDUKKI AT
NEDUMKANDAM 685 553.
- 2 STATE TAX OFFICER,
INTELLIGENCE, SQUAD NO. V,
STATE GST DEPARTMENT, RAJAKKAD,
IDUKKI DISTRICT 685 566.
- 3 ASSISTANT COMMISSIONER (INTELLIGENCE)
STATE GST DEPARTMENT,
IDUKKI AT NEDUMKANDAM 685 553.
- 4 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.

GOVERNMENT PLEADER THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30.09.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



J U D G M E N T

The petitioner, who is an assessee and registered dealer under the Kerala State Goods and Services Tax Act, 2017, is engaged in timber business. In the writ petition, she impugns Ext.P1 intimation that was issued to her in terms of Section 74(5) of the KGST Act read with Rule 142(1A) of the SGST Rules, whereby she was intimated of the tax, penalty and interest payment that she was required to make in the event of her opting to make such payment to avoid a show cause notice under Section 74(1) of the Act. In the writ petition, it is the case of the petitioner that although she has paid the tax amount intimated in Ext.P1, she ought not to be mulcted ^{जुर्माना करना} with a liability to pay interest thereon, and 15% of the penalty, in as much as the tax amount conceded by her has become payable only from the date on which the intimation was issued to her. In other words, the contention of the petitioner is essentially that she must be permitted to avail the option envisaged under Section 74 without paying the interest and penalty amounts that are stipulated as conditional payments for avoiding the show cause notice envisaged under the said provision.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents. The learned counsel for the petitioner relied on the decisions in **Maruti Wire Industries Pvt.Ltd. v. S.T.O, 1st Circle, Mattancherry and others** [(2001) 3 SCC 735] and **J.K.Synthetics Ltd. v. Commercial Tax Officer** [AIR

1994 SC 2394].

3. On a consideration of facts and circumstances of the case and the submissions made across the Bar, I find that the contention of the petitioner that she should be exempted from the requirement of paying interest and penalty while availing the option of payment of tax for the purposes of avoiding the show cause notice cannot be accepted. The scheme of making a payment of tax together with interest and 15% of the amount as penalty envisaged under Section 74 is for the purposes of enabling an assessee to avoid the show cause notice contemplated under the said provision. What is offered to the petitioner under the provision is an **option** of either (i) paying the tax intimated by the statutory authorities, together with interest thereon and a fixed amount towards penalty, in which event a show cause notice would not follow or (ii) denying her liability to tax, interest and penalty and contest the show cause notice that would follow. The petitioner, however, wants to get the best of both worlds by opting for the former course and simultaneously obtaining an exemption from the requirement of payment of interest and penalty amounts intimated to her by the Department. In my view, such an exercise is not permissible in terms of the Statute. When the scheme under Section 74 for avoiding a show cause notice is one that is optional to an assessee, the assessee has either to opt for it or look away from it. If she opts for the scheme, she has to comply with the terms under which the option is made available under the statute. She cannot seek a variation of the said scheme. The judgments relied upon by counsel



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for the petitioner also do not advance the case of the petitioner as they deal with a different issue. The prayers sought for in the writ petition cannot be granted and the writ petition is therefore dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

DG



APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | TRUE COPY OF THE INTIMATION OF TAX ASCERTAINED AS BEING PAYABLE UNDER SECTION 74(5) OF KSGST ACT IN FORM GST DRC 01A NO. CR/3/2019-20 DATED 24.8.2020 ISSUED BY THE FIRST RESPONDENT ALONG WITH ANNEXURE. |
| EXHIBIT P2 | TRUE COPY OF THE PAYMENT RECEIPT DATED 19.09.2020 OBTAINED BY THE PETITIONER. |
| EXHIBIT P3 | TRUE COPY OF JUDGMENT DATED 10.2.2020 IN WRIT PETITION C NO. 3556 OF 2020 PASSED BY THE HONBLE HIGH COURT OF KERALA. |