

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 27TH DAY OF OCTOBER 2020 / 5TH KARTHIKA, 1942

WP(C).No.5238 OF 2020(D)

PETITIONER:

MADHAV MOTORS
NH 17, NADAL, P.O.EDAKKAD, KANNUR-670663, BY REGESH
P.P., MANAGER.

BY ADVS.
SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENTS:

- 1 STATE TAX OFFICER,
IIIRD CIRCLE, GST DEPARTMENT, TELEPHONE BHAVAN, KANNUR-
670001.
- 2 DEPUTY COMMISSIONER OF STATE TAX,
CIVIL STATION ANNEXE, KANNUR-670001.
- 3 COMMISSIONER OF STATE TAX,
TAX TOWER, KARAMANA, THIRUVANANTHAPURAM-695002.
- 4 GOODS AND SERVICE TAX NETWORK (GSTN),
THRO ITS CHAIRMAN, EAST WING, 4TH FLOOR, WORLD MARK-1,
AEROCITY, NEW DELHI-110037.
- 5 GOODS AND SERVICES TAX COUNCIL,
OFFICE OF GST COUNCIL SECRETARIAT, 5TH FLOOR, TOWER-II,
JEEVAN BHARATH BUILDING, JANPATH, CANNAUGHT PLACE, NEW
DELHI-110001, REP. BY SECRETARY TO GST COUNCIL.
- 6 THE NODAL OFFICER FOR STATE GST,
GOODS AND SERVICES TAX DEPT KARAMANA,
THIRUVANANTHAPURAM-695002.

BY SHRI.P.R.SREEJITH, SC, GSTN
BY SMT.SINDHUMOL.T.P., CGC
BY GOVERNMENT PLEADER SMT.M.M.JASMINE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27.10.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is a dealer in automobiles and was registered as such under the erstwhile Kerala Value Added Tax Act (hereinafter referred to as 'the KVAT Act). With the introduction of the GST Act with effect from 01.07.2017, he had applied for a registration under the said Act and by Ext.P1 certificate dated 28.06.2017, he was granted a provisional registration in terms of Section 139 (1) of the said Act. It is the case of the petitioner that, thereafter, with a view to getting a permanent registration, he had attempted to upload the Form TRAN-1 for conversion of the provisional registration to a permanent registration as also for claiming input tax credit in respect of the tax paid on closing stock that was available with him at the time of the transition into the GST regime. He submits that despite a number of attempts made for the purpose, he was not able to login to the system and upload the TRAN-1 Form. While matters stood thus, in November 2019, the petitioner attempted to generate e-way bills through the web portal of the respondents but, once again, could not do so since he had not received the permanent registration that he had applied for by then. It is significant to note that, while the permanent registration was not granted, the provisional registration initially granted had also not been cancelled by the respondents through the procedure contemplated under

the Act. Under the said circumstances, the petitioner preferred Ext.P2 representation before the respondents, which again did not yield any response. In the meanwhile, by Ext.P3 certificate dated 04.01.2020, the petitioner was granted a fresh registration under the GST Act. Ext.P3 indicates that the date of liability of the petitioner is recognised by the respondents as 01.07.2017, the date of introduction of the GST Act. However, while describing the validity period of Ext.P3 registration certificate, the respondents indicated that it would be valid only from 04.01.2020. Noticing the said discrepancy in the registration certificate, the petitioner preferred a request before the respondents for change in the effective date of the registration certificate from 04.01.2020 to 01.07.2017. The said request of the petitioner was rejected by Ext.P4 communication dated 11.01.2020. Impugning the said rejection, the petitioner is before this Court through the present Writ petition.

2. A statement, as well as an additional statement, have been filed on behalf of the 5th respondent, wherein the stand taken is that the petitioner did not comply with the procedure prescribed under the Rules for conversion of the provisional certificate, initially granted to him, to a permanent registration under the Act, and it is under these circumstances, that the respondents did not enable the system to accept any returns or application for permanent registration from the petitioner.

Through a reply affidavit filed by the petitioner he produces as Ext.P8, a communication from the respondents showing that the respondents were aware of the attempts made by the petitioner for uploading the TRAN -1 Form so as to enable him to avail input credit on the closing stock as on 01.07.2017 as also to consider his request for conversion of the provisional registration to a permanent registration. No doubt, the said communication is dated 25.01.2020 and the earlier communication between the petitioner and the respondents have not been produced as they are not now available with the petitioner.

3. I have heard the learned counsel for the petitioner and the learned Standing counsel for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that the procedure that had to be followed by the petitioner for obtaining a registration under the GST, in circumstances where he was already a registered dealer under the erstwhile KVAT Act, is the one prescribed in Rule 24 of the GST Rules. It is not in dispute that the petitioner applied for a registration in accordance with Rule 24 and was in fact granted a provisional registration as evident from Ext.P1 certificate dated 28.06.2017. It is also significant to note that thereafter, the provisional

registration granted to the petitioner was not formally cancelled by the respondents by following the procedure envisaged under the Act for cancellation of the provisional registration. Under such circumstances, the petitioner continued to function under the provisional registration granted to him, although the absence of a permanent registration resulted in a situation where he could not upload the returns and other documents enabling him to claim input tax credit in respect of the tax paid stock of material that was available with him. The permanent registration was granted to him by Ext.P3 dated 04.01.2020 and in the said permanent registration issued to him the date of liability is shown from 01.07.2017. This would clearly indicate that the respondents were aware that the petitioner fell under the category of dealers who were taking refuge under the transition Clause - Rule 24 of the GST Rules- that enabled existing dealers under the KVAT regime to register themselves as dealers under the GST regime. The respondents, however, stipulated the validity of the permanent registration as commencing only from 04.01.2020. It is this discrepancy that is highlighted by the petitioner in the present writ petition, and stated to be the reason why the benefit of input tax credit etc. are being denied to him, as also for his not being able to upload the returns for the period prior to 04.01.2020 in the web portal/system maintained by the respondents.

5. In my view, when the provisional registration granted to the

petitioner was not cancelled through the procedure contemplated under the Act and Rules, and the respondents had granted a regular registration on 04.01.2020, the permanent registration must relate back to the date of the provisional registration and the petitioner ought to be entitled to upload the returns for the past period between the date of Exts.P1 and P3 and to avail eligible input tax credit based on the returns uploaded by him. This is more so because it is admittedly the case that there was no formal order canceling the provisional registration, that was communicated to the petitioner in terms of the Act and Rules.

6. Accordingly, I quash Ext.P4 communication, and direct the respondents to amend the Registration Certificate issued to the petitioner so as to make it valid from 01.07.2017, and permit the petitioner to upload the returns for the period covered by Exts. P5, P6 and P7 statements, and to pay tax as well as claim input tax credit based on the returns so uploaded. The respondents shall do the needful, by providing portal access to the petitioner within a month from the date of receipt of a copy of this judgment.

The Writ Petition is allowed as above.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 PHOTOCOPY OF CERTIFICATE OF PROVISIONAL REGISTRATION DATED 28.06.2017.
- EXHIBIT P2 PHOTOCOPY OF REPRESENTATION MADE BY THE PETITIONER.
- EXHIBIT P3 PHOTOCOPY OF REGISTRATION CERTIFICATE DATED 04.01.2020.
- EXHIBIT P4 PHOTOCOPY OF EMAIL DATED 11.01.2020.
- EXHIBIT P5 STATEMENT SHOWING OUT PUT TAX LIABILITY FOR THE YEAR ENDED 31.03.2018.
- EXHIBIT P6 STATEMENT SHOWING OUTPUT TAX LIABILITY FOR THE YEAR ENDED 31.03.2019.
- EXHIBIT P7 STATEMENT SHOWING OUT PUT TAX LIABILITY FOR THE YEAR ENDED 30.11.2019.
- EXHIBIT P8 COMMUNICATION FROM GST PORTAL
- EXHIBIT P9 RECEIPT DATED 27/01/2020
- RESPONDENTS EXHIBITS:NIL

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P.A TO JUDGE