

IN THE HIGH COURT OF KERALA AT ERNAKULAM**PRESENT****THE HONOURABLE MR.JUSTICE C.S.DIAS****MONDAY, THE 7TH DAY OF AUGUST 2023 / 16TH SRAVANA, 1945****WP(C) NO. 21212 OF 2023****PETITIONER/S:**

KODUVAYUR CONSTRUCTIONS,
XI/382, OPPOSITE KODUVAYUR GRAMA PANCHAYATH OFFICE,
KODUVAYUR, PALAKKAD DISTRICT, REPRESENTED BY
R.RAMESH, MANAGING PARTNER, PIN - 678501

BY ADV ALAN PRIYADARSHI DEV

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER-WORKS CONTRACT,
STATE GST DEPARTMENT KERALA, PALAKKAD, PIN - 678001
- 2 THE DEPUTY COMMISSIONER OF STATE (ARREAR RECOVERY)
STATE GST DEPARTMENT, SECOND FLOOR, SGST COMPLEX,
PALAKKAD, PIN - 678001

OTHER PRESENT:

SMT.THUSHARA JAMES, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07.08.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.S DIAS,J.

WP(C) No.21212 of 2023

Dated this the 7th day of August, 2023.

JUDGMENT

The writ petition is filed, inter alia, to direct the first respondent from initiating any proceedings against the petitioner under the Revenue Recovery Act.

2. The petitioner's case is that it was a registered dealer under the CGST/SGST Acts, 2017. The petitioner's GST registration was cancelled as per Ext P2 order with effect from 30.9.2021. The petitioner was under the impression that it had no liability to pay the respondents under the above Acts. However, the petitioner has been served with Ext P1 order dated 14.10.2022 on the GST portal, calling upon the

petitioner to pay an amount of Rs.19,22,566/-. There has been no effective service of notice on the petitioner by the respondents. The unreasonable demand raised by the respondents through Ext P1 is unjustifiable. Hence, the writ petition.

3. Heard; Sri.Alan Priyadarshi Dev, the learned counsel appearing for the petitioner and Smt.Thushara James, the learned Senior Government Pleader appearing for the respondents.

4. The principal grievance of the petitioner in the writ petition is that its GST registration was cancelled by Ext P2 order dated 21.10.2021. The petitioner was under the bona fide belief that it has no further liability under the CGST/SGST Acts. But, the first respondent has issued the petitioner with Ext P1 assessment order

dated 14.10.2022 demanding the petitioner to pay an amount of Rs.19,22,566/-. The petitioner alleges that it was not served with proper notice as provided under the Act. Hence, the entire proceedings leading to Ext P1 is vitiated and the same is liable to be quashed.

5. Sec.169 of the CGST Act, 2017 deals with the manner in which service of notice to be carried out in certain circumstances. It is apposite to extract Sec.169 of the CGST Act, which reads as follows:

169. Service of notice in certain circumstances

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a

person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section(1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

6. A reading of Clauses (a) to (f) of sub-sec(1) of Sec.169 clearly shows that any decision, order, summons, notice or communication under the Act and Rules can be served on the assessee through any one of the methods mentioned above.

7. The petitioner does not dispute the fact that Ext P1 assessment order was made available on the common portal. The petitioner's only case is that as its GST registration was cancelled by Ext P2 order, the petitioner was under the impression that it has no liability to the respondents. This contention is untenable in view of the alternative modes of service provided

under Sec.169 (1) of the CGST Act. It was the bounden duty of the petitioner to have verified its common portal that is made available as per the provision. Thus, I am of the definite view that the contentions raised in the writ petition that Ext P1 assessment order was not served as per the provisions of the Act is untenable. The writ petition is meritless and is consequentially dismissed.

sd/-

sks/7.8.2023

C.S.DIAS, JUDGE

APPENDIX OF WP (C) 21212/2023

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF ORDER DATED 14.10.2022 ISSUED
BY THE FIRST RESPONDENT

EXHIBIT P2 TRUE COPY OF THE CANCELLATION OF GST
REGISTRATION DATED 21.10.2021

Exhibit-P3 TRUE COPY OF REVENUE RECOVERY NOTICE DATED
24.05.2023 ISSUED BY THE 2ND RESPONDENT

