

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 22ND DAY OF MAY 2018 / 1ST JYAISHTA, 1940

WP(C).No. 2754 of 2018

PETITIONER

NEYYATTINKARA MUNICIPALITY
REPRESENTED BY ITS SECRETARY, NEYYATTINKARA,
THIRUVANANTHAPURAM.

BY ADV.SRI.R.T.PRADEEP

RESPONDENTS:

1. DEPUTY COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
3RD FLOOR, I.C.E BHAVAN, PRESS CLUB ROAD,
THIRUVANANTHAPURAM - 695 001.
2. ASSISTANT COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
OFFICE OF ASSISTANT COMMISSIONER OF CENTRAL EXCISE
SERVICE TAX DIVISION, SURVEY INTELLIGENCE & VERIFICATION
CELL, 3RD FLOOR, I.C.E BHAVAN, PRESS CLUB ROAD,
THIRUVANANTHAPURAM - 695 001.
3. SUPERINTENDENT OF CENTRAL EXCISE & SERVICE TAX
OFFICE OF SUPERINTENDENT OF CENTRAL EXCISE SERVICE TAX 'D'
GROUP,3RD FLOOR, I.C.E BHAVAN, PRESS CLUB ROAD,
THIRUVANANTHAPURAM - 695 001.

BY SREELAL N. WARRIER, SC,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-05-2018, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sdr/-
23.5.18

WP(C) .No. 2754 of 2018 (T)

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 TRUE COPY OF COMMUNICATION DATED 7.8.2013 BY 3RD RESPONDENT.
- EXHIBIT P2 TRUE COPY OF COMMUNICATION DATED 12.11.2013 IN THIS REGARD BY 3RD RESPONDENT.
- EXHIBIT P3 TRUE COPY OF COMMUNICATION DATED 6.12.2013 FROM PETITIONER TO 3RD RESPONDENT WITH APPLICATION FOR REGISTRATION OF SERVICE TAX AND PRODUCTION OF DOCUMENTS SOUGHT FOR.
- EXHIBIT P4 TRUE COPY OF ASSIGNMENT OF SERVICE TAX CODE (REGISTRATION NUMBER) IN FOR ST-2 DATED 9.12.2013.
- EXHIBIT P5 TRUE COPY OF DECLARATION UNDER V.C.E.S SCHEME DATED 31.12.2013.
- EXHIBIT P6 TRUE COPY OF COMPUTERIZED RECEIPT DATED 31.12.2013 OF PAYMENT OF RS. 15,10,228/-
- EXHIBIT P7 TRUE COPY OF COMPUTERIZED RECEIPT DATED 31.12.2013 OF PAYMENT OF RS. 4,00,000/-
- EXHIBIT P8 TRUE COPY OF WORK SHEET OF REVISED CALCULATION OF SERVICE TAX OF RS. 33,25,642/-
- EXHIBIT P9 TRUE COPY OF COMPUTERIZED RECEIPT DATED 30.6.2014 OF PAYMENT OF RS. 14,15,414/-
- EXHIBIT P10 TRUE COPY OF REVISED DECLARATION UNDER V.C.E.S SCHEME DATED 21.3.2015.
- EXHIBIT P11 TRUE COPY OF NOTICE DATED 7.4.2015 BY 1ST RESPONDENT CALLING UPON THE EXPLANATION OF PETITIONER IN CONTEMPLATION TO REJECT THE DECLARATION.
- EXHIBIT P12 TRUE COPY OF EXPLANATION DATED 17.4.2015 BY PETITIONER.
- EXHIBIT P13 TRUE COPY OF EXPLANATION DATED 5.5.2015 BY PETITIONER.
- EXHIBIT P14 TRUE COPY OF ORDER DATED 20.5.2015 BY RESPONDENT.
- EXHIBIT P15 TRUE COPY OF COMMUNICATION DATED 16.10.2015.

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EXHIBIT P16 TRUE COPY OF DEMAND DATED 7.3.2017 FOR INTEREST
OF RS 24,07,083/-

EXHIBIT P17 TRUE COPY OF NOTICE DATED 24.11.2017.

RESPONDENTS EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

sdr/-
23.5.18

P.B.SURESH KUMAR, J.

W.P.(C) No. 2754 of 2018

Dated this the 22nd day of May, 2018

JUDGMENT

Petitioner is a Local Self Government Institution under the Kerala Municipality Act. The petitioner is liable to pay service tax for the various services rendered by them in terms of the provisions contained in the Finance Act, 1994 (the Act). The petitioner however did not obtain registration under the Act nor did they pay the service tax. According to the petitioner, they were not aware of their obligation to pay service tax in terms of the Act. It is stated by the petitioner that when they were informed of their obligation to pay service tax, they have obtained registration under the Act. In the meanwhile, in terms of the provisions contained in the

Finance Act, 2013, a scheme was introduced by the Central Government namely, Voluntary Compliance Encouragement Scheme, 2013 (the Scheme) for settlement of the pending service tax liability of tax payers covered by the Act for the period from 2007-2008 to 2012-2013. It is stated that in terms of the Scheme, the tax payers are exonerated from the liability to pay interest for delayed payment. On coming to know of the Scheme, the petitioner made a declaration to the effect that their liability to pay service tax for the period covered by the Scheme is Rs.38,20,455/- and paid 50% of the said liability in terms of the provisions of the Scheme. In terms of the Scheme, the balance amount payable by the petitioner namely, Rs.19,10,228/- ought to have been paid on or before 30.6.2014. It is the case of the petitioner that on a subsequent verification, it was found that the liability of the petitioner for the period covered by the Scheme is not Rs.38,28,455/-, but only Rs.33,25,642/-. Consequently, the petitioner remitted the deficit amount namely Rs.14,15,414/- towards the balance payable under the Scheme within the time stipulated. It is stated by the petitioner that though they have remitted the entire amount

in terms of the provisions of the Scheme, they were issued Ext.P11 notice by the first respondent calling upon them to show cause why the declaration made under the Scheme shall not be rejected, as they have not made the payment in accordance with the Scheme. The petitioner sent a reply to Ext.P11 notice stating that they have remitted the amounts payable in terms of the Scheme and therefore they shall be extended the benefits of the Scheme. Ext.P14 was the order issued thereafter by the first respondent rejecting the declaration made by the petitioner under the Scheme and thereby denying the petitioner the benefits of the Scheme holding that since there was mistake in the declaration made under the Scheme, the petitioner should have approached the designated authority for amendment of the declaration and should have furnished an amended declaration; that the amended declaration should have been furnished by the petitioner on or before 31.12.2013 in terms of Circular No.170/5/2013-ST dated 8.8.2013 issued by the Government and that the petitioner has not submitted the amended declaration within the time stipulated. Ext.P14 order and the subsequent notices issued by the respondents

to the petitioner demanding compliance of the provisions contained in the Act are under challenge in the writ petition.

2. Heard the learned counsel for the petitioner as also the learned Standing Counsel for the respondents.

3. As noted above, the declaration made by the petitioner under the Scheme has been rejected in terms of the order impugned in the writ petition on the ground that they have not submitted the amended declaration in accordance with the procedure prescribed in Circular No.170/5/2013-ST dated 8.8.2013. As per the said circular, in a case where a mistake is discovered in the declaration by the declarant, he has to approach the designated authority who, after taking into account the over all facts of the case, may allow amendments to be made in the declaration provided that the amended declaration is furnished by the declarant on or before 31.12.2013. The Scheme is one brought into force in terms of the provisions contained in the Finance Act, 2013. Section 107 of the Finance Act, 2013 dealing with the procedure for making declaration for settlement of liability under the Scheme reads thus:

107. Procedure for making declaration and payment of tax dues-

(1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgment issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section(4), the designated authority shall issue an acknowledgment of discharge of such dues to the declarant in such form and in such manner as may be prescribed.”

The Finance Act, 2013 does not deal with the amendments to be made to the declaration provided for under the Scheme. It is in terms of Circular No.170/05/2013-ST dated 8.8.2013, tax payers were permitted to amend the

declaration without changing the date of payment. Insofar as the Finance Act, 2013, does not deal with the amendment of the declaration made under the Scheme and insofar as provision was made for the said purpose in terms of a Circular, I am of the view that denial of the benefits of the Scheme to the petitioner merely for the reason that the petitioner has not furnished the amended declaration within the time stipulated in terms of the Circular is unjust, unfair and unreasonable.

In the said view of the matter, this writ petition is allowed, Ext.P14 order is set aside and the first respondent is directed to consider whether the petitioner has paid the service tax payable in terms of the Scheme within the time stipulated and if found so, extend them the benefits of the Scheme.

Sd/-

**P.B.SURESH KUMAR,
JUDGE**

vps 19/4

/True Copy/

PS to Judge