

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 22ND DAY OF JANUARY 2021 / 2ND MAGHA, 1942

WA.No.1345 OF 2020

AGAINST THE JUDGMENT DATED 13.12.2019 IN WP(C) 27940/2019(N) OF
HIGH COURT OF KERALA

APPELLANTS/ RESPONDENTS 1 TO 4 :

- 1 UNION OF INDIA,
DEPARTMENT OF REVENUE, CBEC,
MINISTRY OF FINANCE,
NEW DELHI - 110 001.
- 2 GOODS AND SERVICES TAX COUNCIL,
5TH FLOOR, TOWER-11,
JEEVAN BHARATHI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI - 110 001.
- 3 GOODS AND SERVICES TAX NETWORK PVT LTD,
EAST WING, 4TH FLOOR,
WORLD MARK-1, AEROCITY,
NEW DELHI - 110 037.
- 4 THE PRINCIPAL NODAL OFFICER,
THIRUVANANTHAPURAM ZONE,
C/O COMMISSIONER OF CENTRAL TAX AND
CENTRAL EXCISE, CENTRAL REVENUE BUILDING,
I.S PRESS ROAD, KOCHI - 682 018.

BY ADV. SRI.P.R.SREEJITH, SC,
CENTRAL BOARD OF EXCISE AND CUSTOMS

RESPONDENTS/ PETITIONER AND RESPONDENT NO.5 :

- 1 A.F.BABU,
PROPRIETOR, BRIGHT AUTO AGENCIES,
SANKARAMANGALAM,
PALAKKAD DISTRICT - 679 303.

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2 THE STATE GST OFFICER,
PATTAMBI, PALAKKAD - 679 303.

R1 BY ADV. SRI.MAHESH V.MENON

R2 BY SR.GOV.T.PLEADER ADV.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
22.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING :

JUDGMENT

Dated this the 22nd day of January 2021

Bechu Kurian Thomas, J.

By the impugned judgment, the learned Single Judge allowed the writ petition and directed the respondents in the writ petition to open an online portal to enable the first respondent to file the form GST TRAN-I electronically or to accept the same manually. Aggrieved by the said direction, the Union of India along with the GST Council and others have preferred this appeal.

2. The case of the first respondent was that he was the assessee under the Kerala Value Added Tax Act, 2003, who migrated to the GST regime and was entitled to carry forward the tax paid on purchase of the goods under the earlier tax regime to the new regime and to avail the benefit of the credit under the earlier regime. A press release issued, presumably at the behest of the appellants, it was conveyed to the public that the time to upload the declaration in form GST TRAN-I was available till 30.12.2017 and believing the same the first respondent attempted to upload the declaration on 29.12.2017. The attempts were futile. Immediately the first respondent enquired with the GST network as to when the portal would re open again, so as to enable him to upload the

required details for migration. The first respondent's query was met with denial for the reason that the first respondent had not attempted to log on to the system before 27.12.2017, which was the last date for requesting for migration. The first respondent challenged the denial of permission for migration of the credit entitled to by the first respondent as per the provisions of Sections 139 to 143 of the Goods and Services Tax Act (for short, 'the Act'). The learned Single Judge by the impugned judgment allowed the writ petition holding that the press release was in fact made though the same was a mistake and that the mistake on the part of the appellants ought not to deprive the substantive benefit due to the first respondent under the Act, that too on account of a technical procedural error.

3. The appeal is preferred alleging that there was no technical error in the common portal so as to warrant a direction of the nature issued by the learned Single Judge. It was also pointed out that the first respondent had about six months time to upload GST TRAN-I form and even the press release had clearly specified that the relevant notification for the decisions mentioned in the press release will be issued soon. In the light of such a note in the press release, the first respondent ought to have verified the existence of the notifications, before assuming to himself the extension of time limit till 30.12.2017.

4. We have heard Adv.P.R.Sreejith, Senior Central Government

Standing Counsel as well as Adv.Mahesh V. Menon for the first respondent and the learned Government Pleader Adv.Mohammed Rafiq for the 2nd respondent.

5. The existence of a press release issued on 20.11.2017 is admitted by the learned Senior Central Government Standing Counsel. It is also admitted that there was no press release intimating that the date specified in the press release was a mistake or that it was not supported by any consequent notification. A large group of dealers believe the statements that come in the newspapers and especially in the absence of a clarification or a subsequent notification, it cannot be said that a dealer, who acted upon the basis of a press release, especially during the transitional stage could be said to have committed any default. It is elementary that when a period is prescribed for doing an act, the person bound to do such an act is entitled to wait until the last day and he cannot be found fault with for not carrying out such an act much ahead of the date of expiry.

6. When the first respondent had all valid reasons to assume that the facilities to upload the necessary form was available till 30.12.2017, it is not available in the eye of law for the respondents to loathe the action of the first respondent in attempting to upload on 29.12.2017.

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7. It is an undisputed fact that the assesseees as well as the department have faced several difficulties, especially during the transitional stage of the new tax regime and even a Grievance Redressal Committee had also been formed for redressing the grievance of the dealers. However, as it is evident from in Ext.R4(a), the Committee had preferred to deal with the issue raised by the first respondent in a hyper technical manner. Such an approach, according to us was wrong.

In such circumstances, we are of the view that the learned Single Judge was perfectly justified in issuing the judgment impugned. In such circumstances, we do not find any merit in the appeal and the same is dismissed. However, it is made clear that the judgment in W.P.(C) No.27940/2019 cannot be treated as a precedent for any purposes. The directions shall be considered as given in the singular circumstances of this case.

Sd/-
S.V.BHATTI, JUDGE

Sd/-
BECHU KURIAN THOMAS, JUDGE

RKM