

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 29TH DAY OF MAY 2020 / 8TH JYAISHTA, 1942

WP(C).No.22101 OF 2017(K)

PETITIONER/S:

GASHA STEELS PRIVATE LIMITED
KANJIKODE, PALAKKAD, REPRESENTED BY ITS
DIRECTOR, P.T.AYSHA.

BY ADVS.
SRI.K.SRIKUMAR (SR.)
SRI.P.R.AJITHKUMAR
SRI.K.MANOJ CHANDRAN
SRI.S.A.MANSOOR (PATTANAM)
SRI.P.V.THOMAS

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
OFFICE OF THE ASST.COMMISSIONER (ASSESSMENT)
SPECIAL CIRCLE, DEPT. OF COMMERCIAL TAXES,
PALAKKAD-678001
- 2 THE DEPUTY COMMISSIONER
DEPARTMENT OF COMMERCIAL TAXES, PALAKKAD-678001
- 3 THE INSPECTING ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
PALAKKAD-678001.

R1 BY GOVERNMENT PLEADER

OTHER PRESENT:

GP DEEPA NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29.05.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 29th day of May, 2020.

The petitioner is a private Limited Company registered on the rolls of the first respondent. On the basis of an inspection conducted at the petitioner's factory on 15.11.2006, penalty was imposed with respect to the assessment year 2005-06. The order imposing penalty is pending in revision.

2. The grievance in the writ petition pertains to the assessment of alleged escaped turn over for the year 2005-06, finalised under Ext.P4 assessment order dated 25.05.2017. The singular contention urged by the petitioner is that the time limit of five years prescribed under Section 25(1) of the KVAT Act having expired as early as on 31.03.2011, Ext.P4 is invalid and

unsustainable. Even though this contention was raised before the assessing authority, that was brushed aside on the premise that Section 25B empowers the Deputy Commissioner to extend the period for completion of assessment and that in exercise of such power, Ext.P1 was issued excluding the period for completion of assessment for the year 2005-06 up to 31.03.2017. The petitioner has challenged Ext.P1 on the ground that Section 25B does not confer power on the Deputy Commissioner to extend the period for initiation of proceedings, after expiry of the five year period.

3. The validity of assessment orders issued under Section 25(1) after the prescribed period and the ambit of power conferred on the Deputy Commissioner under Section 25B was considered by a Division Bench of this Court in Commercial Tax

Officer and others v. S.Najeem and another [2018 (3) 877]. The Division Bench held that the action initiated by the Department after expiry of five years from the last date of the assessment year to which the return relates, cannot be sustained. As regards the power conferred on the Deputy Commissioner under Section 25B, it was held that the power conferred by the Section is only to extend the period of limitation for completion of assessment and not for initiation of the proceedings contemplated under Section 25(1). In the light of the Division Bench judgment, the challenge against Exts.P1 and P4 is only to be upheld.

In the result, the writ petition is allowed, by quashing Exts.P1 and P4. No order as to costs.

sd/-
V.G.ARUN
JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF ORDER NO. P-13-757/2016 DATED 31/3/2016
EXHIBIT P2	TRUE COPY OF NOTICE DATED 10/01/2017
EXHIBIT P3	TRUE COPY OF REPLY DATED 25/4/2017
EXHIBIT P4	TRUE COPY OF THE ASSESSMENT ORDER DATED 25/5/2017