

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 35073 OF 2015

PETITIONER:

SPEED AUTOMOBILES
THOTTADA, KANNUR - 670007,
REPRESENTED BY ITS PARTNER, SRI. P.V.SAJEEVAN.
BY ADVS.
SRI.ANIL D. NAIR
KUM.MEKHALA M.BENNY
SMT.O.A.NURIYA
SRI.R.SREEJITH
KUM.SOUMYA PRAKASH

RESPONDENTS:

COMMERCIAL TAX OFFICER
OFFICE OF THE COMMERCIAL TAX OFFICE,
THIRD CIRCLE, THANA , KANNUR 670 012.
SRI.SAYED MURTHALA THANGAL-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 31st day of May, 2023

This writ petition is filed seeking the following prayers:

“(i) call for the records leading to issuance of Ext.P4 order and quash the same by issuing the writ of certiorari.

(ii) pending hearing and final disposal of the writ petition, this Hon’ble Court be pleased to grant stay of operation of Ext.P4 order”

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner is a registered dealer under the KVAT Act. It is stated that there had been a change in the constitution of the partnership of the petitioner. Ext.P2 notice was issued to the petitioner on 22.09.2015 by the respondent stating that there is a change in partnership which has not been intimated to the Department and requiring the petitioner to show-cause why the KVAT registration shall not be cancelled. The petitioner has submitted Ext.P3 reply, but without reference to the same, Ext.P4 order was passed on 16.11.2015 cancelling the

registration. An interim stay was granted by this Court on 20.11.2015 and is in force. While so, it is submitted by the learned counsel for the petitioner that, on the strength of the KVAT registration, the petitioner has later obtained a GST registration and is continuing its operations. It is submitted that Ext.P4 order may be set aside and the delay which has occurred in the submission of the documents and the intimation of the change in constitution of the partnership may be directed to be condoned.

4. A counter affidavit has been placed on record by the respondent. It is stated that the firm was registered on 21.04.2006 with two partners, viz. Smt.Premeela Sadanandan and Sri.M. P. Muraleedharan. Registration particulars are produced as Ext.R1(a). It is submitted that, on 22.09.2015, while verifying the returns as well as the audited statements submitted by the assessee for the year 2012-13, it came to the notice of the respondent that the constitution of the partnership had been changed without intimation. It is stated that till 22.09.2015, the factum of change of partnership had not been intimated to the Department. Relying on Section 16(9) of the KVAT Act as well as

Rules 91 and 92 of the KVAT Rules, it is submitted that the action of the petitioner in not intimating the Department of the change in constitution of the firm would attract the action of cancellation of registration as done in Ext.P4 and that there is no provision for condonation of the delay in intimating the factum of change of constitution of partnership.

5. Having considered the contentions advanced on either side and in view of the fact that Ext.P4 had continued under orders of stay by this Court from 20.11.2015 onwards, I am of the opinion that the request made by the petitioner is liable to be considered. In the above view of the matter, Ext.P4 is set aside. The explanation furnished by the petitioner that the delay in intimating the fact of change of constitution was by inadvertence shall be considered by the Department and appropriate orders passed thereon within a period of three months from the date of receipt of a copy of this judgment. The fact that the reconstituted firm has obtained registration under the new regime shall also be appropriately considered while passing orders as directed above.

This writ petition is ordered accordingly.

Sd/ -

ANU SIVARAMAN

JUDGE

NP

APPENDIX OF WP(C) 35073/2015

PETITIONER'S EXHIBITS

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| EXHIBIT P1 | TRUE COPY OF THE PARTNERSHIP DEED DATED 18.11.2011 |
| EXHIBIT P1 | TRUE COPY OF THE NOTICE NO.32120729065/2012- 13 DATED 22.9.2015 ISSUED BY THE RESPONDENT |
| EXHIBIT P3 | TRUE COPY OF THE REPLY DATED 8.10.2015 SENT TO THE RESPONDENT BY THE PETITIONER |
| EXHIBIT P4 | TRUE COPY OF THE ORDER DATED 16.11.2015 ISSUED BY THE RESPONDENT TO THE PETITIONER |

RESPONDENT'S EXHIBITS:

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| EXHIBIT R1(a) | TRUE COPY OF THE REGISTRATION PARTICULARS WITH RESPECT TO THE PETITIONER FIRM, AVAILABLE WITH THE RESPONDENT. |
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