

(2020) 11 KL CK 0156

High Court Of Kerala

Case No: Writ Petition (Civil) No. 21480 Of 2020 (H)

M/S.Coastal Tiles And Sanitarries

APPELLANT

Vs

State Tax Officer Kerala State
Goods And Service Tax Dept And
Ors

RESPONDENT

Date of Decision: Nov. 26, 2020

Hon'ble Judges: A.K. Jayasankaran Nambiar, J

Bench: Single Bench

Advocate: S.K. Devi, Santhosh P. Abraham, Dr. Thushara James,

Final Decision: Disposed Of

Judgement

1. The petitioner, which is a partnership firm, has approached this Court aggrieved by the refusal of the 1st respondent in granting permission requested by the petitioner for settling arrears under the Amnesty Scheme, on the ground that it had not opted for settlement of the arrears for the assessment year 2012- 13, taking note of its success before the First Appellate Authority, but ignoring the fact that the Department had carried the matter in a further appeal before the Appellate Tribunal. In the writ petition, it is the contention of the petitioner that inasmuch as on the date of submission of the application for Amnesty, the liability for the assessment year 2012-13 under the KVAT Act did not exist, on account of the order of the First Appellate Authority in its favour, it was entitled to treat the said year as one without any outstanding liability to the Department for the purposes of the Amnesty Scheme.
2. Through a statement filed on behalf of the respondents, it is pointed out that, as per the terms of the Amnesty Scheme in vogue, all arrears including

tax, interest and penalties pertaining to an assessee have to be settled together, and the arrears for the purposes of settlement have to be calculated as on the date of submission of the option by the assessee. In cases where appeals have been filed by an Officer empowered by the Government under the respective enactment, and where final orders are pending, the said cases can also be opted for settlement under the Scheme by reckoning the demand in the original assessment order. It is the case of the respondents, therefore, that inasmuch as for the assessment year 2012-13, the respondents had carried the order passed by the First Appellate Authority, in favour of the assessee, in a further appeal before the Appellate Tribunal, within the time permitted under the Statute, the said assessment year had also to be taken into account by the petitioner for the purposes of settlement under the Amnesty Scheme. The decision of the 1st respondent in not granting permission as requested by the petitioner is sought to be justified on the said reasoning.

3. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the Amnesty Scheme is one that contains various provisions which have to be reckoned together for the purposes of understanding the true scope and ambit of the Scheme. On a holistic reading of the said provisions, it would appear that the Scheme envisages an option to be exercised by the assessee concerned for settlement of outstanding liabilities under the various enactments covered under the scheme. The benefit under the scheme is conditional in that if an assessee opts for settlement of arrears under any particular enactment, he/she has to opt for settlement of arrears in respect of all the assessment years where such arrears are outstanding. In the case of appeals preferred by the Department against any order passed in favour of the assessee by any statutory authority, the assessee opting for settlement would have to reckon the original liability confirmed against him by the Assessing Authority for the said year also for the purposes of settlement under the Scheme.

In the instant case, while it may be a fact that, for the assessment year 2012-13, on the date of submission of the option by the petitioner assessee, he

had a favourable order from the First Appellate Authority, the right of appeal that is granted to the Department under the Statute cannot be rendered ineffective through an unilateral action on the part of the assessee to opt for settlement. The provisions of the Act have to be read holistically so as to not render illusory the rights conferred under the Statute. When so read, it must be found that notwithstanding the submission of option by the assessee in the instant case, the appeal preferred by the Department within the time granted under the Statute cannot be ignored while reckoning the assessment years in which amounts are seen as outstanding from an assessee for the purposes of settlement. I am of the view that inasmuch as there was an appeal filed by the department, within the statutory period permitted for doing so, in respect of the assessment year 2012-13 under the KVAT Act, it is for the petitioner to include the demand confirmed against him by the assessment order for the said year also while opting for the benefit of the Amnesty Scheme, in respect of arrears outstanding under the KVAT Act. Accordingly, I dispose the writ petition by directing that if the petitioner includes the liability in respect of the assessment year 2012-13 also, in the application submitted for the benefit of Amnesty, the respondents shall consider the same in accordance with the provisions of the Scheme.