IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 6TH DAY OF FEBRUARY 2025 / 17TH MAGHA, 1946

WA NO. 238 OF 2025

AGAINST THE JUDGMENT DATED 22.11.2024 IN WP(C) NO.40226 OF 2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 2 & 1:

1 THE DEPUTY COMMISSIONER (INTELLIGENCE),
OFFICE OF THE DEPUTY COMMISSIONER (INTELLIGENCE),
STATE GOODS AND SERVICE TAX DEPARTMENT,
ERNAKULAM, PIN - 682024

2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

BY SMT.RESMITHA RAMACHANDRAN, GOVERNMENT PLEADER

RESPONDENT/PETITIONER:

MINIMOL SABU, AGED 48 YEARS
W/O. LATE SABU MANTHANATHU, UTHUPARAMBIL, LORDS
4B, SKYLINE IMPERIAL GARDEN, PALARIVATTOM,
ERNAKULAM, PIN - 682025

OTHER PRESENT:

ADV AKHIL SURESH FOR RESPONDENT

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Easwaran S., J.

This intra-court appeal is preferred by the State aggrieved by the judgment dated 22.11.2024 of the learned Single Judge in WP(C) No.40226/2024.

2. The brief facts for the disposal of the appeal are as follows: The 1st respondent herein (assessee), approached the writ court by filing the writ petition challenging Ext.P1 show cause notice issued under Section 74 of the Central Goods and Services Tax Act, 2017/State Goods and Services Tax Act, 2017. The assessee is engaged in the business of sale of gold, silver and diamond ornaments. On 25.5.2023, the appellant conducted a search in the premises of the writ petitioner and collected certain data from the software “Gold Mine”, which was used by the assessee for billing purposes. Later, a notice was issued requiring the assessee to show cause as to why an amount of Rs.4,88,56,298/- shall not be assessed as short paid on detection of suppression of outward supply for the periods 2017-18 to 2023-24 and a further amount of Rs.11,85,843/- shall not be imposed as flood cess. Pointing out various discrepancies in the notice to show cause, the assessee preferred Ext.P2 reply. Placing reliance on the

judgment dated 12.9.2024 in WP(C) No.31434/2024, the petitioner approached the writ court mainly seeking the following relief:

> "i.Issue a writ in the nature of certiorari, or any other appropriate writ, order or direction, quashing Exhibit P1 show cause notice;"

3. The learned Single Judge who considered the writ petition ordered that the authorities under the SGST Act, 2017 will consider the preliminary issue raised by the petitioner against the invocation of Section 74 thereof, especially with regard to the contention of the petitioner/assessee that a part of the alleged suppressed turnover belongs to a separate entity belonging to her husband with a separate registration. Aggrieved by the above finding, the State is before us in this appeal contending primarily that the scheme of the CGST Act/SGST Act does not envisage separate orders being passed in the nature which has been directed by the learned Single Judge.

4. Heard Smt.Resmitha Ramachandran, the learned Government Pleader and Sri.Akhil Suresh, the learned counsel appearing for the respondent/writ petitioner.

5. The question to be considered by us is whether the direction of the learned Single Judge can be sustained in the light of the statutory scheme envisaged under CGST Act/SGST 2017. Section

74(1) of the CGST Act/SGST Act authorises the proper officer to issue a notice to show cause. Sub-Section (2) of Section 74 envisages that such notice shall be issued six months prior to the time limit specified under sub-Section (10) of Section 74. The power of adjudication conferred on the proper officer is under sub-Section (9) of Section 74, which reads as under:

> "**74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.**
>
> **xxx xxx xxx**
>
> (9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order."

It is also the mandate of the statute that the proper officer shall issue the order under sub-Section (9) of Section 74 within a period of five years from the due date of submission of the annual return.

6. When the statutory provisions under Section 74 of the CGST Act/SGST Act is read altogether, we find that there is no provision enabling either the assessee to claim adjudication in stages

nor has any power being conferred upon the proper officer to adjudicate the lis in stages.

7. When a request is made by the assessee either before the authorities or before the court to have their lis adjudicated in part, then, before granting such request, the authority or the court should ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other drastic consequences. We must also notice here that it is rather in the interest of the assessee that a complete adjudication of the issue is done by the proper officer under Section 74 of the CGST Act/SGST Act because of the accumulation of the interest factor on the tax that may be ultimately found due from him.

8. In a given case, where the detection of the suppression is found at a later stage and the statute permits issuance of a notice within six months from the time prescribed for completion of adjudication under sub-Section (9) of Section 74, then, entertaining the request of the assessee for part adjudication will be detriment to the interest of the Revenue as well as to the assessee. Accepting the said request would also lead to a situation where the mandatory period required for completion of the proceedings under Section 74 cannot be adhered to, resulting in an irreversible damage to the Revenue.

9. We must also say that, the power of the High Court under Article 226 of the Constitution of India cannot be invoked by the assessee, who is faced with a notice under Section 74 seeking a part adjudication of the lis, which is pending before the proper officer. Of course, in a given situation, when it is alleged that there is a total lack of jurisdiction in issuance of the show cause notice, the High Court may exercise its discretion in entertaining the writ petition. But, as a general rule, the writ petition against the issuance of a show cause notice under Section 74 of the CGST Act/SGST Act cannot be entertained.

10. In **D.P.Maheswari v. Delhi Administration & Ors [(1983) 4 SCC 293]**, the Supreme Court has clearly delineated the jurisdiction of the High Court in entertaining the writ petition against preliminary issues. Though the Supreme Court was considering the power of the labour courts and the industrial tribunals under the Industrial Disputes Act, 1947 on deciding the preliminary issues raised before it, we find that the principle laid down by the Supreme Court can very well be applied to taxation laws as well. We thus hold that the jurisdiction of the High Court under Article 226 of the Constitution of India cannot be allowed to be exploited by those who can afford to wait to the detriment to those who cannot afford to wait by dragging

the latter to the court for adjudication on peripheral issues, avoiding decision on the issues more vital to them. Article 226 of the Constitution of India is not meant to be used to break the resistance of the Revenue in this fashion. In exercise of such jurisdiction, the High Court is required to refrain from issuing directions to the authorities under the taxation statute to decide issues in stages or on a preliminary basis.

11. We have been informed that going by the time limit prescribed under sub-Section (10) of Section 74 of the CGST Act/SGST Act, the adjudication has to be completed by 8.2.2025. However, in view of the interim order passed in the writ petition staying further proceedings under Section 74, which was in operation for a period of seven days, the Revenue will get the benefit of the stay and the period of adjudication will expire only on 15.2.2025. We are also informed that the assessee has already been put on notice to appear before the adjudicating authority/proper officer on 10.2.2025. We, therefore, direct the 1st respondent/assessee to appear before the adjudicating officer on 10.2.2025 and issue a further direction to the proper officer under Section 74 of the CGST Act/SGST Act to complete the hearing on 10.2.2025 itself and pass a composite final order on or before 15.2.2025.

In the result, subject to the exception as directed above, we allow the appeal and modify the judgment of the learned Single Judge, accordingly.

Sd/-
DR.A.K.JAYASANKARAN NAMBIAR,
JUDGE

Sd/-
EASWARAN S.,
JUDGE

jg