



WP(C)No.15898/2018

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2025:KER:86182

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

THURSDAY, THE 13<sup>TH</sup> DAY OF NOVEMBER 2025 / 22<sup>ND</sup> KARTHIKA, 1947

WP(C) NO. 15898 OF 2018

PETITIONER:

M/S.JOSCO FASHION JEWELLERS  
RAJIV GANDHI SHOPPING CENTER, KOTTAYAM, REPRESENTED BY ITS  
PROPRIETOR SRI.P.A.JOSE.

BY ADVS.  
SHRI.A.KUMAR (SR.)  
SHRI.P.J.ANILKUMAR  
SMTG.MINI(1748)  
SRI.P.S.SREE PRASAD

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE COMMISSIONER  
STATE GOODS AND SERVICES TAX DEPARTMENT,  
THIRUVANANTHAPURAM-695 001.
- 3 ASSISTANT COMMISSIONER SPECIAL CIRCLE  
STATE GOODS AND SERVICES TAX DEPARTMENT, KOTTAYAM-686 001.

BY ADV SRI.K.K.RAVINDRANATH, ADDL.ADVOCATE GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05.11.2025,  
THE COURT ON 13.11.2025 DELIVERED THE FOLLOWING:



**CR**

JUDGMENT

Dated this the 13<sup>th</sup> day of November, 2025

1. Petitioner is a dealer in gold ornaments and jewellery registered under the Kerala Value Added Tax Act, 2003 (for short, 'KVAT Act') and CST. The Petitioner had been opting for payment of tax at compounded rates under Section 8(f) of the KVAT Act since the year 2006. Exts.P1 and P2 are the Orders dated 18.02.2011 and 13.12.2011 allowing the Applications of the Petitioner for compounding and determining tax for the Assessment Years 2010-11 and 2011-12. Petitioner is challenging Exts.P4 and P5 Notices issued by the Respondent No.3 proposing to cancel Exts.P1 and P2 permissions to pay tax at compounding rate on the ground that the Intelligence Officer (IB), Thiruvananthapuram, has found that the Petitioner did not declare certain purchases in the Returns in Form 10DA



filed during the relevant Assessment Years in which the compounding were opted. The Respondent No.3 issued Exts.P4 and P5 Notices invoking Section 8(f)(iv) and/or Section 25(1) of the KVAT Act.

2. The Special Government Pleader (Taxes) appearing for the Respondents filed a Memo dated 19.06.2018 producing the Counter Affidavit filed by the State in W.P.(C) No.11335/2018 stating that the issues involved in this Writ Petition and in W.P.(C) No.11335/2018 are identical and praying to adopt the said Counter Affidavit in the present case. It appears that Respondents adopted the Counter Affidavit filed by the State in W.P.(C) No.11335/2018, since in both W.P.(C) No.11335/2018 and this Writ Petition, there is a challenge against the constitutional validity of certain provisions of the Kerala State Goods and Services Tax Act, 2017.



3. I heard the learned Senior Counsel for the Petitioner, Sri. A. Kumar, instructed by Adv. Smt. G. Mini, and the learned Special Government Pleader (Taxes), Sri. Mohammed Rafiq.
4. The learned Senior Counsel for the Petitioner confined his arguments to the challenge against Exts.P4 and P5 Notices raising the following points:
  1. Exts.P4 and P5 are time-barred as the proceedings are initiated beyond the time limit prescribed under Section 25(1) of the KVAT Act.
  2. Since Exts.P4 and P5 Notices under Section 8(f)(iv) are issued as per the direction of the Deputy Commissioner in Exts.P9 and P10 Orders, the proceedings are initiated in a predetermined manner without any subjective satisfaction of the Assessing Authority as mandated under Section 8(f)(iv).



3. The cancellation of the option of compounding is not permissible under Section 25AA(5) of the KVAT Act which provides that if any suppression of turnover of gold is detected with respect to dealers who have paid tax at the compounding rate, such suppressed turnover alone shall be assessed at the scheduled rate applicable to the goods and in such case the option of compounding for that year shall not be cancelled.
4. It is not legally permissible for the Assessing Authority to cancel the permission to pay tax at the compounded rate relying on the alleged suppression of the very same year in which the compounding was opted.
5. Since the Petitioner has opted to pay tax at compounded rate, he is not liable to submit a Monthly Return as required under Rule 22 of the KVAT Rules, 2005, and he needs to file only Quarterly Returns as



required under Section 24 of the KVAT Act in Form 10D and there is no provision to declare purchases by the Petitioner in Form 10D.

5. At the outset, the learned Special Government Pleader challenged the maintainability of the Writ Petition as Exts.P4 and P5 are only Notices and the Petitioner can very well respond to the Notices by raising all the contentions and there is no extraordinary situation to invoke the Writ jurisdiction of this Court to quash the proceedings at the initial stage itself. In answer to the contentions of the learned Senior Counsel for the Petitioner, the learned Special Government Pleader made the following submissions.

1. Exts.P4 and P5 proceedings are initiated under Section 8(f)(iv) of the KVAT Act and not under Section 25(1) of the KVAT Act and hence the limitation period under Section 25(1) is not applicable to the



proceedings. Section 42(3) of the KVAT Act was inserted as per the Kerala Finance Act, 2016, with effect from 01.04.2005. As per Sub Clause (iv) of Section 42(3), if a dealer fails to declare any sale, purchase or interstate stock transfer as evidenced from the documents prescribed under Section 46 available within the Assessing Authority in the sales and purchase lists filed along with the returns, the assessment of such dealer for the relevant year for the purpose of Section 25 shall be treated as pending and the time limit mentioned thereunder shall not be applicable in such cases. In view of the said provision, even assuming that Section 25(1) is applicable, the limitation period therein is not applicable, as the assessment is treated as pending since the Petitioner failed to declare the purchase in the returns.



2. Merely because Exts.P9 and P10 Orders of the Deputy Commissioner preceded Exts.P4 and P5 Notices, it could not be said that the Assessing Authority has no power to proceed under Section 8(f)(iv). Exts.P4 and P5 proceedings are initiated pursuant to a Crime file initiated at the instance of the Intelligence Officer (IB), Thiruvananthapuram. On getting information of the suppression, it is well within the power of Respondent No.3 to initiate proceedings for cancellation of Exts.P1 and P2 permissions.
3. Section 25AA of the KVAT Act was introduced as per the Kerala Finance Act, 2019, with effect from 01.04.2019 and Exts.P4 and P5 proceedings were initiated much before the introduction of Section 25AA, and hence Section 25AA is not applicable to Exts.P4 and Ext.P5 proceedings.



4. There is no legal bar to rely on the suppression of the relevant year itself for instituting the proceedings for cancellation under Section 8(f)(iv).
5. Whether there is a suppression or not in the Returns filed by the Petitioner is a matter for the Assessing Authority to consider with reference to the materials available before it and this Court is not expected to undertake such enquiry while exercising the jurisdiction under Article 226 of the Constitution of India.
6. In view of the objection raised by the learned Special Government Pleader as to the maintainability of the Writ Petition on account of the existence of an alternate remedy before the Assessing Officer, let me answer the said contention first. The learned Special Government Pleader cited the decisions of the Hon'ble Supreme Court in *Thansingh Nathmal and Others v. A. Mazid, Superintendent of Taxes [(1964) 6 SCR 654]*, *Titaghur Paper Mills*



***Co. Ltd. and Another v. State of Orissa and Others [(1983) 2 SCC 433], Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others [(1998) 8 SCC 1], Commissioner of Income Tax and Others v. Chhabil Dass Agarwal [(2014) 1 SCC 603], Genpact India Private Ltd. v. Deputy Commissioner of Income Tax and Another [(2022) 18 SCC 782] and Assistant Commissioner of State Tax and Others v. Commercial Steel Limited [(2022) 16 SCC 447]*** in support of his contentions.

7. In ***Thansingh Nathmal (supra)***, the Constitutional Bench of the Hon'ble Supreme Court held that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles; that the exercise of the jurisdiction is discretionary, it is not exercised merely because it is lawful to do so; that the very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations; that



resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute; that ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy; that again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed; that the High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief; that where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High



Court normally will not permit by entertaining a petition under Art.226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

8. In ***Titaghur Paper Mills Co. Ltd. (supra)***, the Hon'ble Supreme Court held that when the Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution; that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.
9. In ***Whirlpool Corporation (supra)***, the Hon'ble Supreme Court held that under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition; that the High Court has imposed



upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction; that the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged.

10. In ***Chhabil Dass Agarwal (supra)***, the Hon'ble Supreme Court held that it is settled law that non - entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self - imposed limitation; that it is essentially a rule of policy, convenience and discretion rather than a rule of law and that undoubtedly, it is within the discretion of the High Court to grant relief under Article



226 despite the existence of an alternative remedy; that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice.

11. In ***Genpact India Private Ltd. (supra)***, it is held that admission of writ petition cannot estop the Court from examining the maintainability of the petition on the ground of the availability of an alternate remedy. It arose from a case in which the High Court refused to entertain the writ petition on account of the existence of an alternate remedy.
12. In ***Commercial Steel Limited (supra)***, the Hon'ble Supreme Court held that the existence of an alternate remedy is not an absolute



bar to the maintainability of a writ petition under Article 226 of the Constitution; that a writ petition can be entertained in exceptional circumstances where there is a breach of fundamental rights, a violation of the principles of natural justice, an excess of jurisdiction, or a challenge to the vires of the statute or delegated legislation.

13. In ***Prodair Air Products India Private Limited v. State of Kerala [2023 (3) KHC 1]*** cited by the learned Senior Counsel for the petitioner, this Court held that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should ideally be decided by the High Court instead of dismissing the writ petition on the ground of an alternate remedy being available.
14. It is useful to extract Paragraph 2 of the decision of this Court in ***V2 Associates (M/s.) v. State of Kerala [2024 (3) KLT 168]*** cited by the learned Senior Counsel for the petitioner.



“2. It is true that Ext.P3 order is appealable as contended by the learned Government Pleader. But this Writ Petition has been remaining in this Court since the year 2016 with an unconditional interim order staying all further proceedings pursuant to Ext.P3 and P5 in favour of the Petitioner, I am of the view that the interest of justice would demand disposal of this writ petition on merits without relegating the Petitioner to alternate remedy available under the Statute. That apart, the Respondent No.2 has expressed his stand through the Counter Affidavit dated 29/06/2016 in answer to the contentions raised in the writ petition. This Court would be fully justified in considering long pending cases on merits, when the *lis* could be decided without spending much judicial time and without resorting to much adjudicatory process on the basis of admitted set of facts or facts revealed from admitted documents. For disposal of the writ petitions like this, the judicial time to be spent on it would be same, either it be for considering the matter on merits or for relegating



the matter to the Statutory Authority. When long pending matters are listed for final hearing, the Court has to compare the amount of official time and energy required to be spent to bring the matter before the Statutory Authority and to decide the matter by the Statutory Authority with the judicial time required by this Court for considering the matter on merits. If this Court disposes such matters, much official and adjudication time could be spared and better utilised. But, If the decision is to be taken after undertaking long and time consuming adjudicatory process or the adjudicatory process involves answering multiple questions of law and / or facts or findings on factual issues it is better for this Court to leave the matter for the decision of the Statutory Authority. This principle shall be applied only in the cases of long pending matters and shall not be understood to enable bypassing of statutory remedies. The Court has to exercise its discretion applying the facts and circumstances of each case. I lend support from the Division Bench judgment of this Court in Sujatha M.



v. Secretary, Cochin Devaswom Board, Thrissur, 2014 (4) KLT 79, which specifically held that the rule of alternate remedy is not an absolute bar but only a self imposed restriction. So exercising my discretionary power applying the relevant inputs in the present case, since the issue to be decided is only the question of limitation on the admitted facts, I deem it fit to decide the writ petition on merits. Relegating the writ petitioner to alternative remedy available under the statute at this distance of time would quite be inappropriate and would amount travesty of justice.”

15. The decisions of the Hon'ble Supreme Court cited by the learned Special Government Pleader do not lay down an absolute proposition that when an alternate remedy is there, the remedy by way of writ petition is totally barred. It is purely the discretion of this Court, taking into consideration the totality of the facts and circumstances of the case. I follow the decisions of this Court in ***Prodair Air Products India Private Limited (supra)*** and



**V2 Associates (supra)** in this regard. In this case also, the controversy is purely a legal one and it does not involve disputed questions of fact but only questions of law. This Writ Petition has also been remaining in this Court since the year 2018 with an unconditional interim order staying all further proceedings pursuant to Exts.P4 and P5 in favour of the Petitioner. The contention Nos.1 to 4 raised by the learned Senior Counsel for the Petitioner are to be decided on the admitted facts. In view of those contentions, including limitation, it is unnecessary to relegate the Petitioner to the Assessing Authority. The contention Nos.1 to 3 are that the statutory authority has not acted in accordance with the provisions of the KVAT Act. Considering the aforesaid parameters, I am of the view that the interest of justice would demand disposal of this writ petition adjudicating the above contentions raised by the Petitioner



without relegating the Petitioner to the alternate remedy available under the Statute.

**POINT NO.1**

16. The contention of the Petitioner is that Exts.P4 and P5 proceedings are time-barred as they are initiated beyond the period of five years prescribed under Section 25(1). There could not be any quarrel that if Section 25(1) of the KVAT Act is applicable, Exts.P4 and P5 Notices are beyond the period of five years as per the provision that existed before 01.04.2017. The limitation period for the assessment years 2010-11 and 2011-12 expired on 31.03.2017. Following the decision of the Hon'ble Supreme Court in *Assistant Commissioner (Assessment) v. M/s. Cholayil Private Limited [2023 KHC OnLine 7078]*, this Court in *N.K. Trading Company (M/s.) v. State of Kerala [2024 (6) KLT 65]* and *V2 Associates (supra)* held that the extension contemplated under the Third Proviso to Section 25(1) is only for completion of



assessments that have already been initiated in accordance with Section 25(1) and that the Third Proviso does not extend the period of limitation for initiation of proceedings provided in Section 25(1).

17. Now the contention of the learned Special Government Pleader is that Exts.P4 and P5 proceedings are initiated under Section 8(f)(iv) of the KVAT Act and not under Section 25(1) of the KVAT Act, and hence, the limitation period under Section 25(1) is not applicable to the proceedings. The learned Senior Counsel for the Petitioner pointed out that in Exts.P4 and P5, the Respondent No.3 has invoked Section 25(1) also since Respondent No.3 knew well that the limitation period in Section 25(1) is applicable to the proceedings for cancellation under Section 8(f)(iv). Even though Section 25(1) is invoked in Exts.P4 and P5 Notices, I am of the view that the same can be ignored if the Respondents are able to substantiate that there is no



limitation for initiating proceedings under Section 8(f)(iv) for cancellation of permission for payment of tax at compounding rate.

18. Section 8(f)(iv) does not refer to any limitation period for initiating proceedings for cancellation therein. The question in such case is whether it could be said that there is no limitation period for initiating proceedings under Section 8(f)(iv) for cancellation of permission for payment of tax at compounding rate.

19. In ***MCP Enterprises v. State of Kerala [(2020) 74 GSTR 103 (Ker)]***, this Court considered the extent of retrospective operation of Section 42(3) of the KVAT Act. Considering the Scheme of the Act and the Rules, this Court held that there can be inferred a finality to assessment proceedings within a specified period from the end of the assessment year and relying on the decisions in ***State of Gujarat v. Patel Raghav Natha and Others [AIR***



**1969 SC 1297], State of Punjab and Others v. Bhatinda District Cooperative Milk Producers Union Ltd. [(2007) 11 SCC 363]; Director of Income-Tax (International Taxation) v. Mahindra and Mahindra Ltd. [(2014) 365 ITR 560 (Bom.)].** It is further held that the fixing of such a specified period would also be in line with the judgments that hold that in the absence of a prescribed time limit for completing assessments under the Statute, a reasonable period has to be read in, and in determining what that reasonable period should be, clues can be gathered from the other provisions under the KVAT Act and Rules. This Court referred to Rule 58(20) of the KVAT Rules, which obliges an assessee to keep his Books of account only for a period of five years from the end of the assessment year in question or two years from the date of disposal of the appeal or revision arising out of such assessments or from the date of completion of any other provision under the Act connected with such assessment,



appeal or revisions whichever is later and thereafter held that this Court has therefore to look at the overall Scheme of the KVAT Act, the interests of ensuring certainty in taxation matters as also the necessity to interpret the provision in a manner that would avoid unconstitutional results such as unreasonableness, unfairness and arbitrariness of the statutory provision, for determining the limits of exercise of the power under Section 42(3); that the time limit specified in Rule 58(20) of the KVAT Rules offers a safe guide to define the limits of the power under Section 42(3) of the Act; that it would ensure that the power to reopen assessments, so as to bring to tax escaped turnover, is not exercised in a manner that prejudicially affects an assessee who is not in a position to meet the charge against him for want of his Books of account and other relevant material; that such a limitation on the power to re-open assessments would also accord with the requirement of ensuring fairness and certainty



in matters of taxation, a feature that has been insisted upon in the tax jurisprudence of our country. The decision of the learned Single Judge in ***MCP Enterprises (supra)*** was confirmed by the Division Bench of this Court in ***State of Kerala v. MCP Enterprises [2022 SCC Online KER 6640]***.

20. Taking analogy from the said decision in ***MCP Enterprises (supra)***, and relying on Rule 58(20) of the KVAT Rules, I am of the view that the same period of five years could be fixed as the limitation period for initiating the proceedings under Section 8(f)(iv) of the KVAT Act for cancellation of permission to pay tax at compounded rate on the principle that where there is no limitation period prescribed under a taxing statute for taking action against an assessee, a reasonable period of limitation has to be read into the statutory provision by the Court. In such case, even if Section 25(1) referred in Exts.P4 and P5 is ignored, the proceedings initiated on 15.03.2018 with respect to



the assessment years 2010-11 and 2011-12 are beyond the limitation period of five years. In view of the contention of the Special Government Pleader that Section 25(1) is not invoked in Exts.P4 and P5 and in view of my finding regarding the limitation period for the initiating the proceedings under Section 8(f)(iv) independently of Section 25(1), there is no need to consider the contention of the Special Government Pleader with reference to Section 42(3). This point is answered in favour of the Petitioner.

## **POINT NO.2**

21. The next contention of the learned Senior Counsel for the Petitioner is that the cancellation proceedings under Section 8(f)(iv) are to be initiated as per the subjective satisfaction of the Assessing Authority and after forming an opinion after hearing the dealer concerned, the Assessing Authority has to obtain approval from the Deputy Commissioner prior to the passing of



the order. The contention is that in the present case, the proceedings are initiated as per the direction of the Deputy Commissioner in Exts.P9 & P10 Orders, and hence, the Assessing Authority acted in a predetermined manner without any application of mind and hence, the proceedings are not in accordance with the provision contained in Section 8(f)(iv) of the KVAT Act. I am unable to accept the said contention. It is clear from Exts.P4 and P5 that the basis for initiating the cancellation proceedings therein is the Crime file of the Intelligence Officer (IB), Thiruvananthapuram, in which the suppression of purchases was found in respect of the assessment years 2010-11 and 2011-12. Even if Exts.P9 and P10 Orders are ignored, the Respondent No.3 is well justified in initiating the action for cancellation proceedings under Section 8(f)(iv). Merely because Exts.P9 and P10 Orders of the Deputy Commissioner preceded Exts.P4 and P5 proceedings, it could not be held that the



proceedings are vitiated and that it is not in accordance with Section 8(f)(iv). Exts.P4 and P5 are only notices inviting objections to the proceedings and giving the opportunity of hearing. The Petitioner can very well raise all objections and legal contentions before the Respondent No.3. It could not be anticipated that the Respondent No.3 will not consider the contentions of the Petitioner and that he has been acting in a predetermined manner on account of Exts.P9 and P10 Orders of the Deputy Commissioner. My view is fortified with the judgment dated 20.03.2017 of this Court in *W.P.(C) No.9336/2017* cited by the learned Special Government Pleader, in which it is held that such prior approval is only a procedural defect. This Point is found against the Petitioner.

### **POINT NO.3**

22. The next contention of the learned Senior Counsel for the Petitioner is based on Section 25AA(5) of the KVAT Act. Section



25AA of the KVAT Act was introduced as per the Kerala Finance Act, 2019. The contention of the learned Special Government Pleader is that Exts.P4 and P5 proceedings were initiated prior to the introduction of Section 25AA, and hence the said provision is not applicable to Exts.P4 and P5 proceedings. The contention of the learned Senior Counsel for the Petitioner is that since Section 25AA was introduced after the VAT regime was over, no purpose would be served by introducing the provision prospectively. It could only be meant for retrospective operation.

23. Section 25AA(5) provides that if any suppression of turnover of gold is detected with respect to dealers who have paid the compounded tax under Section 8(f), such suppressed turnover alone shall be assessed at the scheduled rates applicable to the goods and in such case the option of compounding for that year shall not be cancelled. If Section 25AA(5) is applicable to the



case of the Petitioner, Exts.P4 and P5 proceedings are impermissible. Section 25AA was introduced after the VAT regime was over. There is no purpose for the prospective application of Section 25AA, as the KVAT Act was not existing as on the date of introduction of the said provision. It could have been intended only for retrospective application. Then, how far is the extent of retrospective operation of Section 25AA is the question to be answered. The learned Special Government Pleader cited the Division Bench decision of this Court in ***Thakkaram Restaurant v. State of Kerala [(2021) 90 GSTR 180 (Ker)]*** in which it is held that Section 25AA can apply only to the pending assessments or assessments directed to be redone in appeal or revision. It is further held that where cancellation is carried out and the assessment is concluded on a best judgment assessment basis, there can be no remand made for applying the beneficial provisions, if the cancellation and regular



assessment carried out are unassailable. In ***Sowparnika Projects and Infrastructures Pvt. Ltd. v. State of Kerala [2021 (6) KLT 834]***, another Division Bench of this Court held that as Section 25AA is introduced in the Act after the KVAT Regime has ended and hence it can only apply to pending assessments or assessments directed to be re - opened in appeal or revision; that Section 25AA brought in by the Amendment Act 5 of 2019, makes it clear that the amendment has only prospective effect and does not apply for assessments already completed; and that the intention of the Legislature is only to give effect to assessments which are pending as on the date of insertion of the new Section, otherwise all completed assessments as on 01/04/2019 can be reopened at the instance of the dealer and the Legislature in its wisdom did not intend so. In the present case, cancellation proceedings are still pending and the cancellation is not carried out and the assessment is not



concluded on a best judgment assessment basis. In such case, Section 25AA(5) is applicable and the option of compounding shall not be cancelled and the suppressed turnover alone shall be assessed at the scheduled rate applicable to the goods. In view of Section 25AA(5), Exts.P4 and P5 Notices proposing to cancel the permission to pay at compounded rate are clearly unsustainable. This Point is answered in favour of the Petitioner.

**POINT NO.4**

24. The next contention of the learned Senior Counsel for the Petitioner is that it is not legally permissible for the Assessing Authority to cancel the permission to pay tax at the compounded rate, relying on the alleged suppression of the very same year in which compounding was opted. The learned Senior Counsel relied on the Single Bench judgment of this Court dated 02.08.2017 in *W.P.(C) No.3593/2017* in which it is held that since the Petitioner's payment of tax on compounded basis for the



assessment year 2012-2013, is based on the turnover reported for the previous three consecutive years, any suppression, even if established against the Petitioner for the year 2012-2013, will not have any bearing on the tax paid by the Petitioner on compounded basis for the said year since, the turnover of the Petitioner for the year 2012-2013 is not relevant for the purposes of determining his tax liability on compounded basis for that year. The learned Special Government Pleader contended that the said judgment of the learned Single Judge could not be relied on, as in *W.A. No.1503/2018* arising from the said judgment, the Division Bench made it clear that the said question of law is open. On going through the judgment dated 23.10.2018 in *W.A. No.1503/2018*, I find that the Writ Appeal was dismissed consequent to the dismissal of the C.M. Application to condone delay. In such case, the Writ Appeal was not available before the Division Bench to consider the legality of



the findings of the learned Single Judge. True, the Divisional Bench has left the question of law open while considering the Application to condone delay. The judgment of the learned Single Judge was not modified in any manner. The precedential value of the said judgment dated 02.08.2017 of the Single Bench judgment of this Court in **W.P.(C) No.3593/2017** is still in force. Learned Senior Counsel cited the judgment of the Division Bench of this Court dated 03.03.2025 in **O.T. Rev. No.8/2024** filed by the State in which the legality of the Order of the Kerala Value Added Tax Appellate Tribunal in favour of the assessee relying on the aforesaid judgment in **W.P.(C) No.3593/2017** is considered. A specific question of law was framed: "Whether on the facts and circumstances of the case, the Appellate Tribunal has erred in relying the judgment of this Honourable Court in M/s Arafa Gold Vs. Assistant Commissioner and others in WP(C) No.3593/2017 dated 02.08.2017 as facts of the said case are entirely different with the facts



of the case considered by the Tribunal?” The Revision was dismissed, answering all the questions of law against the revenue and in favour of the assessee.

25. In view of the said judgment in *W.P.(C) No.3593/2017*, Exts.P4 and P5 Notices are unsustainable, as the basis for initiating the cancellation proceedings is the suppression of purchases of the same assessment year in which the compounding was opted. This Point is answered in favour of the Petitioner.

### **POINT NO.5**

26. The last contention raised by the learned Senior Counsel for the Petitioner is not a matter to be considered in a Writ Petition filed under Article 226 of the Constitution of India. It is a matter to be adjudicated by the Assessing Authority itself. Hence, I am not inclined to consider the said contention.



## **CONCLUSION**

27. In view of my answers to Points Nos.1, 3 & 4, I find that the Petitioner is entitled to succeed in this Writ Petition. Accordingly, this Writ Petition is allowed, without costs, issuing a writ of certiorari setting aside Exts.P4 and P5 Notices and all the proceedings thereon.

sd/=

**M.A.ABDUL HAKHIM**

**JUDGE**

Jma



APPENDIX OF WP(C) 15898/2018

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE COMPOUNDING ORDER FOR THE ASSESSMENT YEAR 2010-2011.
- EXHIBIT P2 TRUE COPY OF THE COMPOUNDING ORDER FOR THE ASSESSMENT YEAR 2011-2012.
- EXHIBIT P3 TRUE COPY OF THE ORDER IN WRIT PETITION NO.12648/2016 DATED 19-08-2016.
- EXHIBIT P4 TRUE COPY OF THE NOTICE DATED 15-03-2018 ISSUED BY THE 3RD RESPONDENT FOR THE ASSESSMENT YEAR 2010-2011.
- EXHIBIT P5 TRUE COPY OF THE NOTICE DATED 15-03-2018 ISSUED BY THE 3RD RESPONDENT FOR THE ASSESSMENT YEAR 2011-2012.
- EXHIBIT P6 TRUE COPY OF THE REPLY FILED BY THE PETITIONER.
- EXHIBIT P7 TRUE COPY OF THE ADDITIONAL REPLY (WITHOUT ANNEXURE) FOR THE ASSESSMENT YEAR 2010-2011 DATED 25-04-2018.
- EXHIBIT P8 TRUE COPY OF THE ADDITIONAL REPLY (WITHOUT ANNEXURE) FOR THE ASSESSMENT YEAR 2011-2012 DATED 25-04-2018.
- EXHIBIT P9 TRUE COPY OF THE ORDER OF THE DEPUTY COMMISSIONER FOR THE ASSESSMENT YEAR 2010-11 DATED 14-03-2018
- EXHIBIT P10 TRUE COPY OF THE ORDER OF THE DEPUTY COMMISSIONER FOR THE ASSESSMENT YEAR 2011-12 DATED 14-03-2018.