

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 10<sup>TH</sup> DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944

WP (C) NO. 27349 OF 2022

**PETITIONER:**

SYAMALADASAN KUMARAN,  
AGED 60 YEARS,  
PROPRIETOR, M/S. SEETHALAKSHMI RICE MILL,  
VADAPPARAMBU, KANNADI, PALAKKAD.

BY ADVS.  
K.MANOJ CHANDRAN  
AMMU CHARLES  
S.A.MANSOOR (PATTANAM)

**RESPONDENTS:**

- 1 THE STATE TAX OFFICER,  
FIRST CIRCLE, STATE GST DEPARTMENT,  
TAX COMPLEX, PALAKKAD - 678 001.
- 2 THE JOINT COMMISSIONER,  
OFFICE OF THE JOINT COMMISSIONER,  
STATE GST DEPARTMENT, TAX COMPLEX, PALAKKAD - 678 001.

ADV. THUSHARA JAMES (SR GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
10.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

The petitioner has approached this Court being aggrieved by Ext.P6 order of assessment dated 19.07.2022 under the provisions of the CGST / SGST Acts, completing the assessment for assessment year 2017-18, treating the product of the petitioner as a branded item, for determining the rate of tax.

2. The learned counsel appearing for the petitioner states that the petitioner had not started the business of branded rice in the financial year 2017-18 and that even the machinery for dealing in branded rice was purchased only in the year 2019. It is submitted that the proceedings which culminated in Ext.P6 order appears to have been initiated on the basis of a facebook post published by the son of the petitioner in the year 2019 regarding the starting of business in branded rice. It is submitted that the assessing officer has not considered any contention taken by the petitioner in Ext.P6. It is also submitted that even if the facebook post was to be taken into account, the same cannot be a material for completing assessment against the petitioner for financial year 2017-18 as the facebook post itself was only in the year 2019.

3. The learned Senior Government Pleader objects the grant of any relief to the petitioner stating that the petitioner has an adequate alternate remedy of appeal under Section 107 of the CGST / SGST Acts. It is submitted that impugned order was issued in the month of July and the writ petition itself is highly belated. It is also pointed out that recovery proceedings have been initiated following the demand raised on account of Ext.P6 order.

4. The learned counsel for the petitioner submits that the judgment of this Court in **M/s. Ozone Granites [P] Ltd v. The Intelligence Officer, Commercial Taxes and others** [2018(3) KHC 906], is authority for the proposition that materials such as website information cannot be taken into account.

5. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader for the respondents, I am of the view that the petitioner is entitled to succeed. A reading of Ext.P6 order shows that the proceedings were initiated and continued against the petitioner on the basis of certain facebook posts which showed that the petitioner was dealing in branded rice. The contentions taken by the petitioner that the facebook post itself was of the year 2019 and the

assessment proceedings were for the year prior to that does not seem to have been considered by the assessing authority. Further, the contention taken by the petitioner that the petitioner started dealing in branded rice only after the financial year in question has also not been adverted to by the assessing officer. Therefore, Ext.P6 is quashed, the matter is remanded to the file of the 1<sup>st</sup> respondent, who shall pass fresh orders after affording to the petitioner an opportunity of being heard and also giving to the petitioner an opportunity of producing such documents and materials as he may wish to rely on. Needless to say the fresh assessment order will advert to all the contentions taken by the petitioner. The fresh orders shall be passed within a period of two months from the date of receipt of a certified copy of this judgment. The petitioner shall mark appearance before the 1<sup>st</sup> respondent at 11.00AM on 21.11.2022 and thereafter the proceedings shall be completed as directed above.

Sd/-  
**GOPINATH P.**  
**JUDGE**

DK

**APPENDIX OF WP(C) 27349/2022**

PETITIONER EXHIBITS

- Exhibit P1                    TRUE COPY OF THE NOTICE DATED  
11/08/2020 ISSUED BY THE 1ST RESPONDENT
- Exhibit P2                    TRUE COPY OF THE REPLY SENT BY THE  
PETITIONER DATED 20-10-2020
- Exhibit P3                    TRUE COPY OF THE INTIMATION LETTER  
DATED 5-11-2020 ISSUED BY THE 1ST  
RESPONDENT
- Exhibit P4                    TRUE COPY OF THE SHOW CAUSE NOTICE  
DATED 15-02-2022 ISSUED BY THE 1ST  
RESPONDENT.
- Exhibit P5                    TRUE COPY OF THE ORDER DATED 3-12-2020  
OF THE 2ND RESPONDENT
- Exhibit P6                    TRUE COPY OF THE ORDER OF THE 1ST  
RESPONDENT DATED 19-07-2022.