



W.A.No.1543 of 2016

2025:KER:70576

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 23RD DAY OF SEPTEMBER 2025 / 1ST ASWINA, 1947

WA NO. 1543 OF 2016

AGAINST THE JUDGMENT DATED 27.11.2015 IN WPC NO.11049 OF 2012
OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 DEPUTY COMMISSIONER,
COMMERCIAL TAXES, PALAKKAD-678001.
- 2 THE ASSISTANT COMMISSIONER (ASSESSMENT) ,
SPECIAL CIRCLE, PALAKKAD-678001.
- 3 ASSISTANT COMMISSIONER (ASSESSMENT)-1,
SPECIAL CIRCLE, PALAKKAD-678001.
- 4 ASSISTANT COMMISSIONER (ASSESSMENT)-II,
SPECIAL CIRCLE, PALAKKAD-678001.
- 5 STATE OF KERALA, REP. BY CHIEF SECRETARY TO
GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER, SRI.V.K.SHAMSUDHEEN

RESPONDENTS/PETITIONER:

HAKEEM K., S/O LATE U.AHAMMED KABEER,
U.A.K. HOUSE, NAVAKKODE, KODUVAYUR, PALAKKAD.

BY ADVS.
SRI.V.V.ASOKAN (SR.)
SHRI.K.I.MAYANKUTTY MATHER (SR.)
SMT.S.PARVATHI
SRI.ABRAHAM K.J.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18.09.2025, THE COURT ON
23.09.2025 DELIVERED THE FOLLOWING:

**"C.R."****JUDGMENT****Harisankar V. Menon, J.**

This appeal, at the instance of the respondents in the writ petition, seeks to challenge the judgment of the learned Single Judge, quashing Exts.P8 and P9 assessment orders for the years 2003-04 and 2004-05 completed under the provisions of Section 17D of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as 'the Act' for short).

2. The provisions of Section 17D of the Act provide for finalisation of assessment by a "Fast Track Team". Respondents 1 to 4 in the writ petition forming the team issued Exts.P3 and P4 notices on 13.02.2012 proposing finalisation of assessment in the manner stated thereunder. The petitioner filed objections pointing out that the proposal, as above, was barred by limitation, with reference to the provisions of Section 17(6) of the Act. Section 17(6), inserted with effect from 01.04.1993,



for the first time, provided for a time limit within which an assessment under the Act was required to be completed. Originally, the period for such finalisation was "4 years" and with effect from 31.03.2002, the period was substituted as "5 years". After filing an objection as above, the writ petitioner approached this Court seeking to challenge the notices on the ground of limitation. During the pendency of the writ petition, the proposals in the notices were finalised pursuant to Exts.P8 and P9 assessment orders. The petitioner has incorporated a challenge against those assessment orders also in the writ petition. A learned Single Judge of this Court found that: -

- i. The assessments for the years 2003-04 and 2004-05 ought to have been completed by 31.03.2009 and 31.03.2010, respectively.
- ii. As on the above dates, notices under Section 17D were not issued.
- iii. The amendment to Section 17(6) by the Finance Act, 2011, permitting completion of assessments for the years up to 2005-06 by 31.03.2012 would not apply to the case at hand since it was only when an assessment



was pending as on 31.03.2011, the extended time could be made use of. However, it was found that since, on the date of the introduction of the Finance Act, 2011, as above, there was no assessment “pending”; the assessments could not be sustained.

In the light of the afore, Exts.P8 and P9 were quashed by the learned Single Judge.

3. It is seeking to challenge the afore judgment, the respondents in the writ petition have instituted this appeal under Section 5 of the Kerala High Court Act, 1958.

4. Sri.V.K.Shamsudheen, the learned Senior Government Pleader, on behalf of the appellants, would contend that: -

- i. There is no period of limitation prescribed for finalisation of proceedings under Section 17D of the Act.
- ii. In view of the *non obstante* clause under Section 17D of the Act, the reference made to the limitation prescribed by Section 17(6) of the Act was incorrect. In support of the afore contentions, he relied on the Division Bench judgments of this Court in **Betty Sebastian v. Assistant Commissioner [(2018) 59 GSTR 275]** and S.T.Rev.No.11 of 2021 dated 24.10.2024.



- iii. The finding that there was no assessment pending as on 31.03.2011 is incorrect, since the assessment is deemed to be pending till such time a formal assessment order is passed on the basis of a return. In support of this contention, he relied on the dictum laid down by the Apex Court in **Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur and Others [(1963) 14 STC 976]**.
- iv. The period for finalisation of assessments under Section 17(6) of the Act was being periodically extended by the various Finance Acts of 2009, 2010, 2011 & 2012, and hence the finalisation of assessment was justified.
- v. In other words, according to him, once a return is filed, the assessment is to be taken as "pending" till such time the assessments are finalised, and hence the extension under the Finance Acts would apply.
- vi. No vested right is accruing to an assessee by non-completion of assessment within the time prescribed, as held by the Apex Court in **Ahmedabad Mfg. and Calico Printing Co. Ltd. v. S.G.Mehta, Income-tax Officer, and Another [(1963) 48 ITR 154]**.

5. *Per contra*, Sri.Mayankutty Mather, the learned senior counsel, instructed by Smt.S.Parvathi for the respondents, would contend that:-



- i. The original dealer – the father of the writ petitioner, who died in the year 2006, had promptly filed the returns under Section 17(1) of the Act, for the respective assessment years. Therefore, according to him, the assessing authority had a duty to follow the mandate under Section 17(6) of the Act and finalise/complete the assessments within the period of five years from the expiry of the assessment year. When that be so, even on the face of the *non obstante* clause under Section 17D of the Act, the limitation under Section 17(6) of the Act would apply.
- ii. The extension of the period of limitation by various Finance Acts, including that of the year 2011, would not apply since the assessments were not pending on the prescribed dates. According to him, the Act visualised completion of assessment after insertion of Section 17(6) and therefore, unless it is shown that the assessments were “pending”, the extensions would not apply.
- iii. He contended that limitation is a valuable right available to the assessee, as held by the Apex Court and this Court in various judgments.
- iv. Section 17D of the Act cannot be construed as overriding or bypassing the limitation prescribed under Section 17(6) of the Act. He would contend that **Betty Sebastian** (*supra*) would apply in his favour since it was the re-opening of the assessment that was the subject matter of



the above mentioned case and not the finalisation of the first assessment as in the case at hand.

- v. The judgment dated 26.03.2025 in W.A.No.1700 of 2021 was relied on to contend that the dictum in **Betty Sebastian** (*supra*) was considered by another Division Bench of this Court, holding that inordinate delay in finalising the assessments under Section 17D of the Act cannot be condoned.
- vi. Without prejudice to the above, he contended that a reasonable period of time for assessment has to be read along with Section 17D of the Act.

6. After considering the rival contentions as well as the connected records, the following issues arise for consideration in the case at hand: -

- i. Whether Section 17D of the Act prescribes any time limit for finalisation of assessments?
- ii. Whether an assessment under Section 17D of the Act is required to be completed within the period prescribed under Section 17(6) of the Act.
- iii. Even when there is no period prescribed for finalisation of assessments under Section 17D of the Act, is it not the Department's responsibility to finalise the assessments within a reasonable period?



7. As already noticed, Section 17D of the Act provides for finalisation of assessment by the Fast Track Team, which reads as under: -

“Fast Track method of completion of Assessment-

(1) Notwithstanding anything contained in any other law for the time being in force or in any other provisions of this Act assessments pending under the Act as on the 1st day of April, 2007 may, subject to the provisions of sub-section (2), be completed under the fast track method.

(2) The assessment under sub-section (1) shall be completed in the following manner, namely:--

- (a) The assessment shall be completed by a 'team' comprising of a team of officers which shall be constituted by the Commissioner;
- (b) In the case of files relating to Special Circles, there shall be three Assistant Commissioners in the team, headed by a Deputy Commissioner. In the case of Ordinary Circles, the team shall be headed by an Assistant Commissioner and comprise three Commercial Tax Officers as members;
- (c) All files of the dealer pertaining to an assessment year shall be clubbed with assessment file and taken up for disposal;
- (d) No assessment completed by the teams shall be re-opened unless there is fresh receipt of



materials pertaining to tax evasion;

Provided that the assessment may be re-opened with the prior permission of the Commissioner;

- (e) The assessment shall be completed fairly by a summary proceeding;
 - (f) The team shall be competent to offer reasonable concessions after recording the reasons thereof on the estimation of suppression of turnover on account of any offences detected against the dealer, and also on the interest payable up to a maximum of fifty per cent of that payable, in cases where the dealer offers immediate payment of the dues;
 - (g) The hearings shall be open to public. The date and venue of the sitting shall be intimated in advance to the dealers concerned. Information shall also be published through the local media;
 - (h) No adjournment in the cases listed at a session shall be permitted except under exceptional circumstances;
 - (i) If a dealer fails to appear, the assessment shall be finalized 'ex-parte' following the principles of natural justice;
- (3) All assessment under fast tract method shall be by unanimous decisions signed by all team members.
- (4) Notwithstanding anything contained in any other law for the time being in force the officers of the team shall be



absolved from personal liability on account any assessment order issued in good faith.

(5) Notwithstanding anything contained in any other provisions of this Act, appeals against the assessment orders issued under fast track method shall lie within forty five days to the Sales Tax Appellate Tribunal and no such appeal shall lie unless the dealer has paid the entire tax amount”

The provisions of Section 17D, as rightly contended by the learned Senior Government Pleader, start with a *non obstante* clause. The provisions do not speak about the initiation of assessment proceedings within a particular time or finalisation thereof. By virtue of the *non obstante* clause, there cannot be any reference made to the provisions of Section 17(6) of the Act also. When that be so, we are clear in our mind that the respondents could not contend that the finalisation of assessments by Exts.P8 and P9 orders was beyond the period prescribed under Section 17(6) of the Act. In this connection, a Division Bench of this Court in **Betty Sebastian** (*supra*) has categorically found that “a provision for limitation would definitely be in conflict with the scheme of Section 17D”. This



Court in ST.Rev.No.11 of 2021, by its judgment dated 24.10.2024, had also followed the dictum laid down in **Betty Sebastian** (*supra*), holding that there is no limitation prescribed under Section 17D of the Act for finalisation of assessment steps.

8. Even on the basis of the afore finding, the question arises as to whether the Department would be entitled to finalise the assessment at its sweet will.

9. The Apex Court in **State of Punjab and Others v. Bhatinda District Cooperative Milk Producers Union Ltd. [(2007) 11 SCC 363]** has held as under: -

“18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.”

Similarly, in **Union of India v. City Bank [2022 LiveLaw (SC) 704]**, the Apex Court has held that when a statute does not prescribe a time limit for initiating an action, it needs to be



done within a reasonable time. The Division Bench of this Court in W.A. No.1700 of 2021 has considered the issue with specific reference to the dictum in **Betty Sebastian** (*supra*), holding as under: -

"4. Before us, although it is the submission of the learned Government Pleader, placing reliance on Betty Sebastian (*Supra*), and the judgment dated 24.10.2024 of this Court in ST. Rev. No.11 of 2021, which followed the judgment in Betty Sebastian (*Supra*), we find that even in the Betty Sebastian's case, the Division Bench had found that if there was an unreasonable delay in issuing the notice, the protection granted for the proceedings under Section 17D would not be available. In our view, to condone a delay of 14 years in issuing a notice under Section 17D, on the specious plea that Section 17D does not prescribe for a period of limitation, would tantamount to doing violence to the language used in the statutory provision, which deals with "fast track assessments", and also run contrary to its inherent scheme. It is also significant that under the KGST Act, the maximum period for reopening assessments was 4 years, which could probably be stretched to 5 or 6 years on the justification that Section 17D did not specifically



provide for a period of limitation. A delay of 14 years for the issuance of notice under Section 17D, more so when the statute in question itself has been repealed in relation to the commodity in question, and the Kerala Value Added Tax Act was introduced, cannot be justified under any circumstances. We, therefore, find no merit in this Writ appeal, and the same is dismissed.”

Thus, this Court has found that if the Department is permitted to finalise the assessment beyond a reasonable period, that would be doing violence to the statutory framework, which requires fast track completion of the assessment.

10. We also notice that Division Benches of this Court, in various instances, have held that assessments are required to be completed within a reasonable period of time. In **Parisons Foods (P) Ltd. v. State of Kerala [2017 (3) KLT 1]**, a Division Bench of this Court, following the judgment of the Apex Court in **Bhatinda District Cooperative Milk Producers Union Ltd. (supra)**, held that the assessment under the Central Sales Tax Act, 1956, should be completed within a reasonable



time. In **Commercial Tax Officer, Second Circle, Thrissur and Another v. Fijo Joseph [(2019) 64 GSTR 248]**, a Division Bench of this Court, with reference to the provisions of Rule 6(5) of the Central Sales Tax Rules, 1957, held that a reasonable period of time has to be prescribed for such finalisation. After finding so, this Court found that the assessment should be initiated within five years with reference to the similar period prescribed under the Kerala Value Added Tax Act, 2003. This Court in **State of Kerala v. M/s.Periyar Plywoods [2020 KHC OnLine 781]**, considered the contention of the revenue that principles laid down in the afore judgments were incorrect, and after making reference to the judgment of the Apex Court in **Ghanshyamdas** (*supra*) has held as under:-

"15. In our humble opinion Ghanshyamdas does not apply since there, in one of the appeals the notice was issued within four years and there was no limitation provided for completion. We noticed from paragraph 16 of that decision; the second and third instances



referred, wherein notice was said to have been issued, when the return is filed or defaulted, in which event the assessments were found to be pending. The question of reasonable time as judicially recognized for the first time in *S.B.Gurbaksh Singh* never arose for consideration before the Constitution Bench. A later decision of the Hon'ble Supreme Court in *Bhattinda District Co-operative* reiterated the aspect of reasonable time and provided guidelines as to how a reasonable period of limitation could be judicially brought in "*looking at the nature of the Statutes, rights and liabilities thereunder and other relevant factors*"; an overall consideration of the "*statutory scheme*". This view was consistently taken by the Hon'ble Supreme Court over the years, as is clear from the decisions referred above."

Thus, we are of the opinion that it is trite law that even when the statute does not provide for an outer time limit, the authority has to exercise jurisdiction within a reasonable time. The reasonable period of time for such assessment has to be fixed with reference to the other provisions of the statute. In that view of the matter, we are of the opinion that the assessment has to be initiated at least with reference to 5 years



as prescribed under Section 17(6) of the Act. In such circumstances, we are of the opinion that the initiation and finalisation of the assessment were barred by limitation.

11. In the light of the above, we are not considering the submission made by both sides as regards the application or otherwise of the extensions through the Finance Act, since we have found that the provisions under Section 17D do not visualise a limitation period, with reference to the other provisions of the Act.

Therefore, we find no merit in this appeal, and the same would stand dismissed.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE

In