IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 15TH DAY OF JULY 2026 / 24TH ASHADHA, 1948

WP(C) NO. 14377 OF 2022

PETITIONER:

BHIMA ENTERPRISES, ELANKATH COMMERCIAL COMPLEX, OPP. SL THEATRE, M.G. ROAD, TRIVANDRUM - 695 001, REPRESENTED BY ITS MANAGING PARTNER, SHRI. B. GOVINDAN

BY ADVS.
SHRI.A.KUMAR (SR.)
SHRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SHRI.P.S.SREE PRASAD
SHRI.JOB ABRAHAM
SHRI.AJAY V.ANAND

RESPONDENTS:

1 DEPUTY COMMISSIONER-1, SPECIAL CIRCLE, STATE GOODS & SERVICES TAX DEPARTMENT, THIRUVANANTHAPURAM - 695 002

2 JOINT COMMISSIONER, STATE GOODS & SERVICES TAX DEPARTMENT, TAX TOWERS, 2ND FLOOR, KARAMANA, THIRUVANANTHAPURAM - 695 002

BY ADV GOVERNMENT PLEADER

SMT. HARIMA HARIHARAN, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15.07.2026, ALONG WITH WP(C).10098/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 15TH DAY OF JULY 2026 / 24TH ASHADHA, 1948

WP(C) NO. 10098 OF 2024

PETITIONER:

M/S. BHIMA ENTERPRISES, ELANKATH COMMERCIAL COMPLEX, OPP. SL THEATRE, M.G. ROAD, TRIVANDRUM, REPRESENTED BY ITS MANAGING PARTNER, SHRI. B. GOVINDAN, PIN – 695 001

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

RESPONDENT:

DEPUTY COMMISSIONER (ADJUDICATION)-1, OFFICE OF THE JOINT COMMISSIONER, TAX PAYER SERVICES, SGST DEPARTMENT, TAX TOWER, THIRUVANANTHAPURAM, PIN – 695 002

SMT. HARIMA HARIHARAN, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15.07.2026, ALONG WITH WP(C).14377/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

[WP(C) Nos.14377/2022, 10098/2024]

The petitioner in these two writ petitions is engaged in the business of trading in gold jewellery and is an assessee under the provisions of the KVAT Act, 2003, as well as the CST Act, 1956. The petitioner has also obtained registration under the provisions of the CGST/SGST Act after the enactment of introduction of the Goods and Services Tax (GST) regime in the State.

2. The dispute in these two writ petitions essentially pertains to the assessment year 2017–18, specifically for the months of April, May and June, 2017. The petitioner states that, while filing the returns for the aforesaid period, it omitted to include certain stock transfer inward and outward transactions. Consequently, the petitioner submitted Ext. P1 application before the 1st respondent – Assessing Authority, seeking permission to revise the returns filed.

3. By Ext.P4 proceedings dated 04.02.2021, the 1st respondent has thought it fit to reject the application submitted

as above, essentially stating that the petitioner's books of account have not been audited, as mandated under Section 42 of the KVAT Act. It is seeking to challenge Ext.P4 proceedings issued by the 1st respondent as well as the pre-assessment notice issued under Section 25(1) of the KVAT Act for the afore period, as evidenced by Ext.P5, that the petitioner has filed W.P.(C) No.14377 of 2022.

4. The challenge in W.P.(C) No. 10098 of 2024 appears to be an offshoot of the issues raised in W.P.(C) No. 14377 of 2022. In the said writ petition, the Assessing Authority under the CGST Act has initiated proceedings against the petitioner by issuing Exts.P7 and P8 notices, alleging that the petitioner had effected stock transfers of various goods outside the State and that there is no material to establish that the said goods were subsequently brought back to Kerala. On that premise, the assessing authority has drawn an adverse presumption against the petitioner and issued the impugned notices at Exts.P7 and P8. The petitioner challenges Exts.P7 and P8, as well as Exts.P9 and P10, consequential orders passed pursuant thereto, contending

that, if its request for revision of the returns for the earlier period is allowed, the impugned notices and the consequential orders would also require reconsideration by the Assessing Authority. It is in the above circumstances that W.P.(C) No. 10098 of 2024 has been filed.

5. I have heard Sri. A. Kumar, the learned Senior Counsel instructed by Smt. G. Mini, the learned Counsel for the petitioner, as well as Smt. Harima Hariharan, the learned Government Pleader for the respondents herein.

6. The short issue that arises for consideration in W.P.(C) No. 14377 of 2022 is whether Ext.P4 proceedings issued by the Assessing Authority rejecting the petitioner's request for revision of returns can be sustained or not. As already noticed, the petitioner submitted Ext.P1 application on 28.12.2020 pointing out that certain stock transfer inward and outward transactions for the period from April to June 2017 had inadvertently been omitted from the returns filed for the said period and, therefore, sought permission to revise the returns.

7. However, the sole ground stated in Ext. P4 for

rejecting the application is that the audit contemplated under Section 42 of the KVAT Act had not been conducted. It is true that Section 42 enables an assessee to seek revision of the returns on the basis of the audit report, subject to the time limit prescribed under sub-section (3) thereof.

8. However, in the case at hand, the petitioner has sought revision *de hors* the audit with respect to the books of account for the period 2017–18. In such circumstances, the only question that arises for consideration is as to whether the request for revision was made after the initiation of proceedings by the Assessing Authority against the petitioner on the very same ground highlighted in the application seeking revision of the return. This Court notices that the first notice issued to the petitioner was the one at Ext.P5, dated 30.12.2019, issued under Section 25(1) read with Section 25AA of the KVAT Act for the assessment year in question. This Court further notices that the proposal contained in the aforesaid notice is also with reference to the stock transfers involved during the period from April to June, 2017.

9. In this regard, reference may also be made to the judgment of this Court in W.P.(C) No.22147 of 2017, wherein a learned Single Judge of this Court, while considering an almost similar situation, held that where a request for revision is made even before the initiation of assessment or penalty proceedings, such request is to be accepted. Though the Revenue preferred an appeal against the said judgment, the Division Bench of this Court in **Commercial Tax Officer – I and Another v. C.R. Varghese [2018 (3) KLT 468],** dismissed the appeal. While doing so, the Division Bench also observed that the Department has a duty to rise above a mediocre mindset and should not become merely a facilitator of finance alone.

10. In the light of the above, I am of the opinion that the request for revision of the return made by the petitioner ought to have been accepted.

11. At this juncture, this Court also notices the submission made by Smt. Harima, the learned Government Pleader, with reference to the proceedings dated 11.04.2018 initiated under Section 47(6) of the Act, whereby a penalty of

₹29,20,000/- has been imposed under Section 47 of the Act. The afore order, has not been referred to in the counter affidavit filed by the respondents. This Court further notices that even in the notice issued at Ext.P5 proposing assessment, the aforesaid proceedings have not been referred to. A reading of the aforesaid order would show that it pertains to the transportation of certain gold jewellery allegedly not supported by the documents required under the statute. In my opinion, this cannot constitute a valid ground for rejecting the petitioner's request for revision of the return, for the reasons already noticed.

12. True, in the counter affidavit filed by the respondents in W.P.(C) No.10098 of 2024, reference is made to proceedings initiated against the petitioner on the basis of a crime registered. However, a perusal of the averments contained in paragraph 4 of the said counter affidavit makes it clear that the proceedings relate to the assessment year 2016–17, as is evident from the crime number referred to therein. Consequently, the said proceedings have no bearing on the petitioner's request for revision of the return for the subsequent assessment year (2017-

18).

13. Therefore, I am of the opinion that the impugned order at Ext.P4 in W.P.(C) No.14377 of 2022 requires to be set aside. In view of the above, the notice at Ext.P5 shall be kept on hold until the application for revision of the return submitted by the petitioner, as evidenced by Ext. P1, is considered and disposed of by the Assessing Authority.

14. Accordingly, W.P.(C) No. 14377 of 2022 would stand disposed of as above.

15. As already noticed, the proceedings initiated pursuant to Exts.P7 and P8 notices, as well as the orders at Exts. P9 and P10 in W.P.(C) No.10098 of 2024, are an offshoot of the transactions relating to the earlier months of the assessment year 2017–18. The proceedings have been initiated by drawing an adverse inference against the petitioner on the ground that certain gold jewellery sent outside had not been received back. Inasmuch as the petitioner's request for revision of the return for the period from April to June, 2017 has been directed to be accepted by this judgment in W.P.(C) No. 14377 of 2022, I am of

the opinion that the impugned orders at Exts.P9 and P10, which are the subject matter of W.P.(C) No.10098 of 2024, also requires to be set aside.

Hence, W.P.(C) No.10098 of 2024 would also stand allowed. Exts.P9 and P10 orders issued are set aside. However, it is made clear that the respondents would be entitled to proceed against the petitioner under the GST Act, depending on the outcome of the return revision allowed pursuant to W.P.(C) No.14377 of 2022.

Sd/-
HARISANKAR V. MENON
JUDGE

PR

APPENDIX OF WP(C) NO. 14377 OF 2022

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE REQUEST FILED BY THE PETITIONER FOR REVISING RETURN DATED 26.12.2020**
Exhibit P2	**TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT DATED 30/12/2020.**
Exhibit P3	**TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 18/01/2021.**
Exhibit P4	**TRUE COPY OF THE ORDER DATED 04/02/2021 ISSUED BY THE 1 ST RESPONDENT.**
Exhibit P5	**TRUE COPY OF THE NOTICE DATED 30/12/2021 UNDER SECTION 25(1) ISSUED BY THE 1ST RESPONDENT**
Exhibit P6	**TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 28/02/2022**
Exhibit P7	**TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 07/03/2022**

APPENDIX OF WP(C) NO. 10098 OF 2024

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE REQUEST FOR REVISING THE RETURNS DATED 26.12.2020**
Exhibit P2	**TRUE COPY OF THE NOTICE DATED 30.12.2020**
Exhibit P3	**TRUE COPY OF THE REPLY DATED 18.1.2021 ALONG WITH CONNECTED DOCUMENTS**
Exhibit P4	**TRUE COPY OF THE ORDER REJECTING THE REQUEST FOR REVISION OF RETURN DATED 4.2.2021**
Exhibit P5	**TRUE COPY OF THE W.P.(C) NO. 14377/2022 (WITHOUT ANNEXURES), DATED 19/04/2022**
Exhibit P6	**TRUE COPY OF THE INTERIM ORDER IN W.P.(C) NO. 14377/2022 DATED 15/12/2023 OF THIS HON'BLE COURT**
Exhibit P7	**TRUE COPY OF THE NOTICE DATED 20.09.2023 FOR THE LEVY OF IGST**
Exhibit P8	**TRUE COPY OF THE NOTICE DATED 20.09.2023 FOR LEVY OF CGST AND SGST**
Exhibit P9	**TRUE COPY OF THE ORDER PASSED UNDER THE SGST/CGST ACT DATED 18.12.2023**
Exhibit P10	**TRUE COPY OF THE ORDER PASSED UNDER THE IGST DATED 19.12.2023**