IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

WEDNESDAY, THE 22ND DAY OF JULY 2026 / 31ST ASHADHA, 1948

WA NO. 1253 OF 2026

JUDGMENT DATED 16.10.2025 IN WP(C) NO.17598 OF 2022 OF HIGH COURT OF KERALA

APPELLANT/RESPONDENTS IN WPC:

1 COMMERCIAL TAX OFFICER
3RD CIRCLE, SALES TAX OFFICE, JAWAGHAR NAGAR,
KOZHIKODE, PIN - 673020

2 DISTRICT COLLECTOR
COLLECTORATE, AYYANTHOLE, THRISSUR, PIN - 680003

3 DEPUTY TAHSILDAR (REVENUE RECOVERY)
OFFICE OF DEPUTY TAHSILDAR (RR), MUKUNDAPURAM,
IRINJALAKUDA, PIN - 680121

4 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

5 THE PRINCIPAL SECRETARY
DEPARTMENT OF TAXES, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

SRI SHAIJ RAJ T K -SR GP

RESPONDENT/PETITIONER IN WPC:

VARDHANAN P.R
AGED 50 YEARS
S/O RAJAN, PULIKKAL HOUSE, PUTHENCHIRA, IRINJALAKUDA, THRISSUR DISTRICT, PIN - 680682

SRI S VINOD BHAT

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22.07.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Devan Ramachandran, J

This appeal is against the judgment of a learned Single Judge of this Court in W.P.(C) No.17598 of 2022, directing that the procedure under Section 39 of the KVAT Act be complied with before proceeding against the writ petitioner - who is alleged to be the Director of the assessee Company.

2. Sri.Shaij Raj T.K – learned Government Pleader, submitted that the directions in the impugned judgment are inequitable and wholly incorrect because, the burden to prove whether the non-recovery of the amount from the assessee Company is attributable to the negligence, misfeasance or breach of duty on the part of the Director is not on the Revenue, but on the person making such assertions. He argued that when the writ petitioner/respondent herein was the Director of the assessee Company, who was responsible for its functioning, the learned Single Judge ought not to have given him relief as has been done in the impugned judgment. He prayed that, consequently, the impugned judgment be set aside.

3. Sri.S.Vinod Bhat – learned counsel for the respondent, in response, submitted that this appeal is an abuse of process because, the directions in the impugned judgment are wholly in tune with the statutory obligation of the Revenue under Section 39 of the KVAT Act. He showed us

that the afore provision has been extracted by the learned Single Judge in paragraph No.6 of the judgment; and that it mandates that recovery against the Director for the alleged dues from an assessee Company can be done, only if he had been in such position at the time when the tax and other amount became due; and further that such person also obtains the right to prove that the non-recovery cannot be attributed to any negligence, misfeasance or breach of duty on his part in relation to the affairs of the said Company. He asserted that the learned Single Judge has only directed the Revenue to abide by these protectional prescriptions; and hence that the judgment is irreproachable.

4. When we examine the impugned judgment, we notice that the learned Single Judge has set aside the notices assailed by the respondent for the reason that the procedure under Section 39 of the KVAT Act had not been followed. It also noticed that, it is the specific case of the respondent that he was not a Director of the assessee – Company at the time when the alleged tax became due.

5. After holding as afore, the learned Single Judge has directed the Principal Secretary, Department of Taxes, Government of Kerala - the 5th appellant herein, to ascertain whether there are property standing in the name of assessee Company, and also to examine whether the case of the respondent - that the non-recovery of tax cannot be attributed to him on account of his

negligence, misfeasance or breach of duty - to be examined and decided.

6. The learned Single Judge has issued the directions based on the various precedents covering the field, as have been mentioned therein; leaving it open to the 5th appellant to ascertain the assets of the assessee Company and proceed against it; and if it is not found sufficient, then to proceed against the respondent, however, after examining his defence - that no negligence, misfeasance or breach of duty can be found against him for the non-recovery of the alleged dues. This is more so in the context, as said above, were the respondent asserts that he was not the Director of the Company at the relevant time.

7. We cannot find the directions in the judgment to be in error, though the manner in which it has been framed perhaps would require a little bit of change from our side. This is because, as per Section 39 of the KVAT Act, the onus to prove that the non-recovery was not on account of negligence, misfeasance or breach of duty attributable to the Director, is on the said person and not the Revenue. However, the directions give an indication that the Principal Secretary, Department of Taxes, is to establish that such negligence, misfeasance or breach of duty is attracted. To such extent, we find the grievance in the appeal to be justified and deem it appropriate that we re-frame the directions.

8. This appeal is thus allowed in part, modifying the directions of the

learned Single Judge in the following manner:-

a) The 5th appellant will hear the respondent on his assertion that there are properties belonging to the Company which can be proceeded against immediately; and also that the non-recovery of the alleged dues is not attributable to any negligence, misfeasance or breach of duty on his part. His further contention, that he was not the Director at the time when the alleged tax became due, will also be considered based on the inputs that he is to provide when the afore exercise is completed.

b) The 5th appellant will issue an appropriate reasoned order on the afore aspects; and serve it on the respondent, before taking any action of recovery against his personal assets.

c) Needless to say, the liberty of the Revenue to proceed against the assets of the Company first and then against the assets of the Directors, as per the statutory scheme and precedential declarations, are fully left open.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

Sd/-
BASANT BALAJI
JUDGE

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