

GIB/KR/Baiju A.A./06-12-2019/HC-83

High Court Category : Section 25(1) of KVAT Act

State : Kerala

Order No.: GIB/KR/Baiju A.A./06-12-2019/HC-83

Name of Entry :

Baiju A.A Vs State Tax Officer

Date : 06-12-2019

Breif Issue :

Facts & Issue of the case

The contention of writ petitioners is that, under the provisions of Section 25 (1) of the KVAT Act, as it stood prior to its amendment with effect from 01.04.2017, the limitation period for re-opening an assessment under the Act was five years from the end of the relevant assessment year, and no notices had been served on the assessees within the said period, the subsequent amendment that increased the period of limitation to six years would not confer a jurisdiction on the assessing authorities to re-open an assessment that had become final by 31.03.2017.

It is pointed out, with reference to the decisions in **Garikapati Veeraya v. N.Subbiah Choudhry - [AIR 1957 SC 540]**, **S.S. Gadgil v. Lal & Co. - [AIR 1965 SC 171]**, **I.T.O., Ahmedabad v. Devshankar Bhatt – [AIR 1969 SC 778]**, **State of Punjab and Others v. M/s. Shreyans Indus Ltd., etc. - [AIR 2016 SC 1185]** and **Commercial Tax Officer, Anchal and Others v. S. Najeem and Another - [2018 (4) KHC 666 (DB)]**, that an amendment in a taxing statute cannot be viewed as retrospective in its operation so as to revive assessments that had already attained finality prior to the date of amendment.

Per Contra, authority said that the amendment brought in with effect from 01.04.2017, conferred on the assessing authorities the power to re-open assessments for assessment years up to six years prior to 01.04.2017. They relies upon the judgment of a Constitution Bench of the Supreme Court in **S.C. Prashar and another v. Vasantsen Dwarkadas and others - [AIR 1963 SC 1356]** to fortify his submission. He also places reliance on the decisions of this Court in **Binu Gopinath v. State of Kerala - [2018 (2) KLT 991]** and **Paul Varghese v. State of Kerala – [(2005) 13 KTR 29 (Ker)]** to suggest that the amendments brought about through the Kerala Finance Act, 2017 are retrospective in their operation.

Decision of Advance Ruling Authority :

Decision

The court observed that, the assessment in respect of which period of limitation for reopening the

assessment under section 25 of the KVAT Act was to expire by 31-03-2017 can be reopened up to 31-03-2018 by virtue of an amendment to **the third proviso to section 25(1) of KVAT Act**. The Court also observed that, the assessment in respect of which the period of limitation for reopening under section 25 of KVAT Act was to expire on 31-03-2018, cannot be reopened up to 31-03-2019 or thereafter by relying on third proviso to section 25(1) amendments introduced through Kerala Finance Act 2018 since state legislature did not have power to amend KVAT after Constitution Amendment Act 2016 and repeal of the KVAT Act.