

GIB/KR/MCP ENTERPRISES/18-12-2019/HC-91

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

State : Kerala

Order No.: GIB/KR/MCP ENTERPRISES/18-12-2019/HC-91

Name of Entry :

MCP Enterprises Vs State of kerela

Date : 18-12-2019

Breif Issue :

Facts & Issue of the case

In the writ petitions filed by the petitioner “M/S. MCP ENTERPRISES” claimed that the period envisaged for re-opening of assessments under Section 25 of the KVAT Act had expired by the time the notices for re-opening assessments, invoking Section 42(3) of the KVAT Act, were issued to them.

The petitioner holds that the retrospective operation of Section 42(3) would entail the re-opening of assessments that were completed years ago, and in relation to which assessment years they do not have the relevant Books of account and other records to defend their case against an allegation of escaped turnover. The said contention is based on the provisions of Rule 58(20) of the KVAT Rules, which obliges an assessee to keep his Books of account only for a period of five years from the end of the assessment year in question or two years from the date of disposal of the appeal or revision arising out of such assessments or from the date of completion of any other provision under the Act connected with such assessment, appeal or revisions whichever is later.

The power to assess escaped turnover under Section 25 has, however, to be exercised within the period stipulated under the Act for the exercise of such power. The said period was five years from the end of the assessment year concerned till 31.3.2017, and was extended to six years from the end of the assessment year concerned thereafter.

Decision of Advance Ruling Authority :

Decision

In the result, these writ petitions are **disposed** by upholding the retrospective operation of Section 42(3) of the KVAT Act, but declaring that the power to re-open assessments under the said provision cannot be exercised in relation to such assessments where the period for which the assessee concerned is obliged to retain the Books of account under Rule 58(20) of the KVAT Rules has expired. The assessee is obliged to keep his Books of account only for five years and hence the retrospective operation of Section 42(3) can, at any rate, be only to such extent and not beyond that.

The Court also given clarity on the time limit specified in Rule 58(20) of the KVAT Rules offers a

safe guide to define the limits of the power under Section 42(3) of the Act. It would ensure that the power to reopen assessments, so as to bring to tax escaped turnover, is not exercised in a manner that prejudicially affects an assessee who is not in a position to meet the charge against him for want of his Books of account and other relevant material. Such a limitation on the power to re-open assessments would also accord with the requirement of ensuring fairness and certainty in matters of taxation, a feature that has been insisted upon in the tax jurisprudence of our country.