

**GST/CST & VAT: Kerala VAT - Where assessee filed appeal before Appellate Authority against order of assessment along with application for stay of recovery of assessed tax and during pendency of appeal and stay application steps had been taken by department for recovery of assessed tax, recovery proceedings were stayed till passing of order by Appellate Authority on stay application**

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**[2018] 93 taxmann.com 415 (Kerala)**

**HIGH COURT OF KERALA**

**Aswathy Enterprises**

**v.**

**Assistant Commissioner (Assessment)\***

**DEVAN RAMACHANDRAN, J.**

**W.P. (C) NO. 14860 OF 2018**

**MAY 4, 2018**

**Section 78 of the Central Goods and Services Tax Act, 2017/Section 31 of the Kerala Value Added Tax Act, 2003 - Demands and recovery - Initiation of recovery proceedings - Assessing Authority passed assessment orders on assessee and raised tax demand upon him - Against assessment orders, assessee filed appeals before Appellate Authority along with applications for stay of recovery proceedings - Even though assessee's appeals and applications for stay were pending before Appellate Authority, steps had been taken by revenue authorities for recovery of assessed tax - Whether Appellate Authority was to be directed to pass orders on stay applications preferred by assessee within a period of one month - Held, yes - Whether in mean time all steps for recovery of assessed tax required to be kept in abeyance - Held, yes [Para 5] [In favour of assessee]**

## **FACTS**

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- The Assessing Authority passed assessment orders on the assessee and raised demand upon him.
- Subsequently the Assessing Authority pursuant to the assessment orders initiated recovery proceedings against the assessee.
- The assessee filed a writ petition against the recovery proceedings initiated against him.
- He stated that against the orders of assessment, he had already approached the Appellate Authority by preferring appeals. Even though his appeals and the applications for stay were pending before the Appellate Authority, steps had been taken for recovery of the assessed tax from him. The recovery against him be interdicted at least until such time as the stay applications were considered by the Appellate Authority.

## **HELD**

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- The assessee can be given some respite from the rigor of recovery, at least until such time as his stay petition is considered by the Appellate Authority. [Para 4]
- In such circumstances, the Appellate Authority was to be directed to take up, consider and pass orders on stay applications preferred by the assessee within a period of one month. In the mean time all steps for recovery shall be kept in abeyance. [Para 5]

**Bobby John** and **S. Ajayghosh Kumar** for the Petitioner. **Smt. C.S. Sheeja**, Govt. Pleader for the Respondent.

## **JUDGMENT**

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1. The petitioner impugns the action for recovery initiated by the competent authorities, subsequent to orders of assessment made against him, copies of which have been appended to this writ petition as Exts.P1 and P1(A). According to the petitioner, against the orders of assessment, he has already approached the Appellate Authority by preferring Exts.P2 and P2(A) first appeals before the 2nd respondent, Deputy Commissioner(Appeals). The grievance of the petitioner is that even though his appeals and the applications for stay, copies of which have been produced as Exts.P3 and P3(A), are pending before the Appellate Authority, steps have been taken for recovery of the assessed tax from him. The petitioner prays that the recovery against him be interdicted at least until such time as the stay petition is considered by the Appellate Authority.

2. The learned Government Pleader appearing on behalf of the respondents submits that, it is true that the petitioner has preferred appeals before the Appellate Authority, but she says that since the amount involved is substantial, no order of stay may be granted, except on terms.

3. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Pleader.

4. Taking note of similar orders passed by this Court in analogous situations, I am of the view that the petitioner can be given some respite from the rigor of recovery, at least until such time as his stay petition is considered by the Appellate Authority.

5. In such circumstances, I order this writ petition, directing the Kerala Value Added Tax Appellate Authority to take up, consider and pass orders on Exts.P3 and P3(A) stay petitions preferred by the petitioner, within a period of one month from the date of receipt of a copy of this judgment. Until such time as the Appellate Authority passes an order on the stay petition, and communicates the same to the petitioner, all steps for recovery through Exts.P1 and P1(A) assessment orders, shall be kept in abeyance.

To facilitate an expeditious disposal of the stay petition, I direct the petitioner to place a certified copy of this judgment, along with a copy of this writ petition, before the Appellate Authority, and the time-frame granted in this judgment will begin from the date on which the copy of the judgment and the writ petition are placed before the Tribunal.

s.k. jain

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\*In favour of assessee.