

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 22<sup>ND</sup> DAY OF NOVEMBER 2023 / 1ST AGRAHAYANA, 1945

WP(C) NO. 6753 OF 2023

PETITIONER/S:

KUMARAN K.V.,  
AGED 70 YEARS  
PROPRIETOR, KUMAR MOTOR DRIVING SCHOOL, BLDG. NO 1/1113,  
WADAKKANCHERY ROAD, KUNNAMKULAM, THRISSUR DIST, PIN -  
680503

BY ADV T.A.RAJAGOPALAN

RESPONDENT/S:

- 1 STATE TAX OFFICER (INTELLIGENCE),  
SQUAD NO IV, SGST DEPARTMENT, O/O. TIE DEPUTY  
COMMISSIONER (INTELLIGENCE) GOODS & SERVICES TAX COMPLEX,  
POTHOLE, THRISSUR, PIN - 680004
- 2 JOINT COMMISSIONER (INT),  
STATE GOODS AND SERVICE TAX DEPARTMENT, KERALA,  
GOVERNMENT OF KERALA, ERNAKULAM AT EDAPPALLY, KOCHI, PIN  
- 682024

OTHER PRESENT:

JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
22.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## J U D G M E N T

The present writ petition has been filed impugning the Ext.P24 order dated 31.12.2022. Ext.P24 order, as such, is the assessment order passed under Section 63 of the CGST/SGST Act 2017 in respect of the Financial Years from 2017-18 to 2021-22, holding that the collected amount of Rs.4,13,88,040/- from the customers by the petitioner as service fee for the years 2017-18 to 2021-22 is liable to be assessed at the rate of 18%, the assessing taxable turnover of Rs.4,08,17,050/- along with tax at the rate of 18% amounting to Rs.73,47,069/- and an equal amount of penalty under Section 122(1)(xi) and interest of Rs.43,72,455/-, totalling Rs.1,90,66,593/-.

2. The petitioner is the Proprietor of '*Kumar Motor Driving School*' situated at Building No.1/1113, Kunnamkulam Municipality, Wadakkanchery Road, Thrissur District. '*Kumar Driving School*' is a service provider in the category of motor

training for motorcycles and light and heavy vehicles, and also provides assistance for obtaining a driving license, change of ownership of the vehicle etc., from the concerned Department. The petitioner's proprietorship firm is registered under the provisions of the CGST/SGST Act 2017.

2.1 On 12.07.2022, under the authorisation dated 07.07.2022 of the Joint Commissioner (Intelligence), SGST Department, Ernakulam, the Mobile Squad No.IV, Thrissur had conducted a search at the premises of '*Kumar Driving School*', Kuttippuram Road, Kunnankulam. On inspection, the search party seized the receipts and registers, which contained the accounts and the details of the day-to-day dealings of the said driving school.

2.2 On verification of the records seized, it was found that the year-wise receipts of fees collected from the persons availing the services from the petitioner were Rs.4,13,88,040/- for the years 2017-18 to 2021-22. Since the amount received

was more than the threshold limit in a financial year, i.e., Rs.20 lakhs, as provided under Section 22 of the CGST/SGST Act 2017, the State Tax Officer was of the opinion that the petitioner has committed one of the offences under Section 122(1)(xi) of the CGST/SGST Act 2017 as the petitioner has not taken registration under the CGST/SGST Act 2017 and the said amount was liable to be taxed at the rate of 18% along with penalty and interest. The petitioner was therefore issued a show cause notice dated 27.07.2022 directing him to show cause as to why the tax liability with interest should not be created against the petitioner for conducting the business without registration and why a penalty should not be imposed for violation of the provisions of the Act and the Rules made thereunder.

2.3 The petitioner was also directed to appear before the State Tax Officer, Squad No.IV, SGST Department on 05.08.2022 at 11.00 am. Instead of filing a reply and appearing

as directed in the show cause notice, the petitioner approached this Court by filing W.P.(C) No.25814/2022 impugning the show cause notice issued to the petitioner under Section 63 of the CGST/SGST Act 2017. It was submitted that the search was conducted on the premises of '*M/s Kumar Motors*', which is a proprietary concern of the petitioner's wife. However, proceedings have been initiated against '*Kumar Driving School*', a proprietary concern of the petitioner. This Court was of the opinion that the issue was of the disputed question of facts and should be adjudicated at least in the first instance by the jurisdictional authority. The writ petition was disposed of *vide* judgment dated 25.10.2022 permitting the petitioner to file a suitable reply to the show cause notice issued under Section 63 of the CGST/SGST Act 2017 within a period of three weeks, and the Adjudicating Authority should adjudicate the show cause notice specifically adverting to all the contentions taken by the petitioner including the question

as to whether '*M/s Kumar Motors*' and '*Kumar Driving School*' are separate entities or not.

3. In pursuance of the said direction issued by this Court, the petitioner filed a reply to the show cause notice vide Ext.P23 dated 17.11.2022. The Assessing Authority, State Tax Officer, Squad No.IV, State GST Department, Poothole, Thrissur, meticulously examined the reply/objection of the petitioner raised in reply to the show cause notice. The Assessing Authority, on the basis of the documents seized under Section 67(2) of the CGST/SGST Act 2017, found that the Office of '*Kumar Driving School*' is located at Kuttippuram Road, C-shape building, Kunnamkulam. '*Kumar Motor Driving School*' and '*Kumar Motors*' are one and the same entity. The seized books of accounts, receipt books, day books had the seal of '*Kumar Driving School*' affixed, which would mean that all office functions of '*Kumar Motor Driving School*' were at the office situated at C-shape building, Kuttippuram Road,

Kunnamkulam. The search was conducted on 12.07.2022 in the above said office in which all books of accounts related to '*Kumar Motor Driving School*' were kept for business dealings, including paperwork, vehicle registration, work order, license renewal, agency work, etc. The 'place of business', therefore, as defined under Section 2(85) of the CGST/SGST Act 2017, was one and the same, i.e., C-shape building Kunnamkulam.

3.1 It was also held that under Section 35 of the CGST/SGST Act 2017, the petitioner had failed to keep the books of accounts properly. Both '*Kumar Motors*' and '*Kumar Motor Driving School*' recorded their business income in the same books, in violation of the provisions of Section 35 of the CGST/SGST Act 2017. The petitioner had not submitted full books of accounts, and no actual quantification of the income was provided. The petitioner had submitted incorrect books of accounts without any evidence of any income tax paid to the Government or the refund of fees to students. Therefore, the

reply of the petitioner was not found acceptable. Shri Johny A V was present at the time of the search and was an employee of '*Kumar Motor Driving School*' for 22 years. He had signed the search and seizure memo as a witness. He attended the hearing on 29.08.2022 in response to the summons for the purposes of gathering detailed information. His statement would reveal the following informations: (a) Shri Kumaran K V/the petitioner herein is the beneficial owner of '*Kumar Motor Driving School*', Kuttippuram Road, C-shape building, Kunnamkulam; (b) '*Kumar Motors*' and '*Kumar Motor Driving School*' are one and the same entity; (c) '*Kumar Motor Driving School*' C-shape building, Kunnamkulam is the administrative office of '*Kumar Motor Driving School*' as well. After considering the receipts on the basis of the documents and evidence collected at the time of the search, the assessment order was finalised as mentioned in Ext.P24. Now, the petitioner has approached this Court, impugning the said



assessment order by filing the present writ petition.

4. The order impugned cannot be said to be without jurisdiction and has not been passed in violation of the principles of natural justice. The Assessing Authority has the power to issue a show cause notice under Section 63 and pass the Assessment Order in accordance with the law in respect of the receipts received by the petitioner for providing services. Therefore, the said order cannot be said to be without jurisdiction. The petitioner was afforded the opportunity to file a reply and was also personally heard in the matter, and thereafter, the impugned order was passed.

4.1 While exercising the writ jurisdiction, the Constitutional Court would confine only to the decision-making process of the authority. If the decision has been taken as per the prescribed procedure, in observance of the principle of natural justice, even if the decision is rendered by the authority on an erroneous question of law and a statutory

appeal is available against such an order, the Writ Court would not interfere with the decision and the remedy would be for filing the statutory appeal.

5. Thus, the present writ petition cannot be entertained against the impugned assessment order, which has been passed in accordance with the law. The writ petition is dismissed. However, the petitioner is given the liberty to file an appeal, if he is so advised against the impugned assessment order before the Appellate Authority. If such an appeal is filed within a period of fifteen days from today, the Appellate Authority shall proceed to examine the appeal on merit without going to the question of limitation. It is made clear that this Court has not expressed any opinion on merit, but the writ petition has been dismissed on the grounds of availability of alternate remedy and also there being no violation of procedure in passing the impugned Ext.P24 Assessment Order.

The writ petition stands finally dismissed.

Sd/-

**DINESH KUMAR SINGH**

JUDGE

jjj

APPENDIX OF WP(C) 6753/2023

PETITIONER EXHIBITS

|             |   |
|-------------|---|
| Exhibit P1  | TRUE COPY OF THE DRIVING SCHOOL LICENSE NO.8/7/1994, ISSUED TO THE PETITIONER ON 11-10-2019 HAVING VALIDITY UP TO 27-09-2024                |
| Exhibit P2  | TRUE COPY OF THE RENT RECEIPT DATED 11-07-2022 ISSUED BY THE KUNNAMKULAM MUNICIPALITY TO SMT.LATHA  |
| Exhibit P3  | TRUE COPY OF THE RECEIPT DATED 11-02-2022 ISSUED BY THE KUNNAMKULAM MUNICIPALITY TO SMT.LATHA AGAINST THE PROFESSIONAL TAX                  |
| Exhibit P4  | TRUE COPY OF THE AUTHORIZATION FOR SEARCH NO. JC (INT) 2022-23/INS-1/93, DATED 07-07-2022, ISSUED BY THE 2ND RESPONDENT, JOINT COMMISSIONER |
| Exhibit P5  | TRUE COPY OF THE FORM NO. 12 APPLICATION FOR MOTOR DRIVING SCHOOL LICENSE   |
| Exhibit P6  | TRUE COPY OF THE CHART OF MOTOR THIRD PARTY PREMIUM FOR INSURANCE OF VEHICLE WITH EFFECT FROM 01.06.2022                                    |
| Exhibit P7  | TRUE COPY OF THE AFFIDAVIT OF SRI,JOHNY A V DATED 01.08.2022  |
| Exhibit P8  | TRUE COPY OF THE MAHZER DATED 12-07-2022 SIGNED BY THE 1ST RESPONDENT   |
| Exhibit P9  | TRUE COPY OF THE STATEMENT WHICH THE PETITIONER WAS FORCED TO SIGN BY SRI, FAISAL DATED 12.07.2022  |
| Exhibit P10 | TRUE COPY OF THE SUMMONS NO. JC(INT)2022-23/INS-1/93 DATED 12-07-2022 ISSUED BY THE 1ST RESPONDENT  |
| Exhibit P11 | TRUE COPY OF THE EMAIL DATED 27-07-2022 ISSUED  |

FROM GST DEPARTMENT

|             |  |
|-------------|--|
| Exhibit P12 | TRUE COPY OF THE EMAIL SHOW CAUSE NOTICE<br>DATED 27-07-2022   |
| Exhibit P13 | TRUE COPY OF THE PROFIT AND LOSS ACCOUNT OF<br>KUMAR MOTOR DRIVING SCHOOL FOR THE YEAR 2017-<br>2018, SUBMITTED TO THE INCOME TAX DEPARTMENT |
| Exhibit P14 | TRUE COPY OF THE PROFIT AND LOSS ACCOUNT OF<br>KUMAR MOTOR DRIVING SCHOOL FOR THE YEAR 2018-<br>2019, SUBMITTED TO THE INCOME TAX DEPARTMENT |
| Exhibit P15 | TRUE COPY OF THE PROFIT AND LOSS ACCOUNT OF<br>KUMAR MOTOR DRIVING SCHOOL FOR THE YEAR 2019-<br>2020, SUBMITTED TO THE INCOME TAX DEPARTMENT |
| Exhibit P16 | TRUE COPY OF THE PROFIT AND LOSS ACCOUNT OF<br>KUMAR MOTOR DRIVING SCHOOL FOR THE YEAR 2020-<br>2021, SUBMITTED TO THE INCOME TAX DEPARTMENT |
| Exhibit P17 | TRUE COPY OF THE PROFIT AND LOSS ACCOUNT OF<br>KUMAR MOTOR DRIVING SCHOOL FOR THE YEAR 2021-<br>2022, SUBMITTED TO THE INCOME TAX DEPARTMENT |
| Exhibit P18 | TRUE COPY OF THE COUNTER AFFIDAVIT FILED ON<br>BEHALF OF THE 1ST RESPONDENT IN WPC 25814/2022  |
| Exhibit P19 | TRUE COPY OF THE REPLY AFFIDAVIT FILED IN<br>WP(C)NO. 25814/2022   |
| Exhibit P20 | TRUE COPY OF THE LETTER DATED 11-08-2022 SENT TO<br>THE JOINT COMMISSIONER BY THE PETITIONER   |
| Exhibit P21 | TRUE COPY OF THE LETTER DATED 27-08-2022 SENT BY<br>SMT.LATHA TO THE 1ST RESPONDENT  |
| Exhibit P22 | TRUE COPY OF THE JUDGMENT DATED 25-10-2022 IN<br>WP(C)NO. 25814/2022   |
| Exhibit P23 | TRUE COPY OF THE REPLY DATED 17-11-2022 FILED BY<br>THE PETITIONER BEFORE THE 1ST RESPONDENT   |

- |             |   |
|-------------|---|
| Exhibit P24 | TRUE COPY OF THE ORDER NO.ITC/GST/IV/04/2022-23<br>DATED 31-12-2022 SIGNED ON 08.01.2023  |
| Exhibit P25 | THE TRUE COPY OF THE LETTER NO. R3-10639/2023,<br>DATED 06-05-2023 ISSUED BY THE SECRETARY OF<br>KUNNAMKULAM MUNICIPALITY TO SMT. LATHA A A.  |
| Exhibit P26 | THE TRUE COPY OF THE LETTER NO. R4/10365/2023,<br>DATED. 11-05-2023 ISSUED BY THE SECRETARY OF<br>KUNNANKULAM MUNICIPALITY TO SMT. LATHA A A, |