

TAX INFO

Dated 11/04/2022

Latest update on GST Law: Information regarding **Recovery proceedings should not be initiated till expiry of the period for filing an appeal given in Judgment by Kerala High Court.**

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Name of Petitioner	K.T.Joseph
Name of Respondent	Deputy Commissioner Of State Tax
Court	Kerala High Court
Date of Judgement	25.03.2022
Appeal No.	WP(C) NO.10331 OF 2022

Brief Facts of the Case Law:

Petitioner was a registered dealer under the Kerala Value Added Tax Act, 2003. For the assessment year 2016-2017, an order of assessment was issued against the petitioner, against which an appeal was preferred before the 1st appellate authority. Though the first appeal was dismissed, by order dated **30.12.2021**, but petitioner intends to prefer a second appeal before the Kerala State Value Added Appellate Tribunal. The order of the first appellate authority was served on the petitioner only on **22.02.2022** and he has a period of 60 days from the date of receipt of the order to prefer an appeal.

But even before the period for preferring the appeal expired, Department initiated recovery proceedings and froze the bank account, thereby crippling petitioner's entire business activity. The recovery proceedings should not be initiated till the period for filing an appeal is over.

Decision of the Court:

It is essential in the interest of justice that proceedings for recovery be initiated only after expiry of the period for filing the appeal. Since the petitioner was served with the order of the first appellate authority only on 22.02.2022, the period for filing the appeal will expire only on 21.04.2022.

Initiating recovery proceedings even before the expiry of the said period will make the appeal practically redundant. In view of the above, it is ideal that the recovery proceedings are not proceeded with till 21.04.2022 so as to enable the petitioner to move an appeal to the appellate authority.

Accordingly, the prohibitory order issued by the Department shall be kept in abeyance for a period till 21.04.2022. It was clarified that if the petitioner files an appeal as well as a stay petition before 21.04.2022, then the prohibitory order shall continue until the stay petition is considered or two months thereafter, whichever is earlier.

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