(2014) 11 KL CK 0197

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 28102 of 2014 (K)

Abdul Manaf APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Value Added Tax Act, 2003 — Section 88, 92

Citation : (2014) 11 KL CK 0197

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : K.B. Muhamed Kutty, Sr. Adv., K.M. Firoz, M. Shajna and S. Kannan, Advocate for the Appellant; Shoba Annamma Eapen, Senior Government Pleader, Advocate for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The petitioner has approached this Court with the following prayers:

i) to declare that Rule 24D of the KVAT Rules is only directory and not mandatory and the petitioner is entitled to file the return manually.

ii) to call for the records leading to Exhibit P14 and quash the same by issue of a writ of certiorari

iii) to call for the records leading to Ext. P5 to P12 and quash the same by issuing a writ of certiorari or any other appropriate direction or order;

iv) to stay the recovery steps pursuant to Ext. P7 to P12;

v) to grant such other relief as this Hon''ble Court may deem the circumstances of the case."

2. Heard the learned Sr. Counsel for the petitioner as well as the learned Government Pleader for the respondents. The main challenge is with regard to Ext. P5 order, whereby registration of the petitioner has been cancelled by the

first respondent/Commercial Tax Officer, which according to the petitioner is not in conformity with the statutory requirements, as without issuing proper notice and without giving an opportunity of hearing. The petitioner challenges the correctness and sustainability of Exts. P7 to P9 assessment orders as well as Exts. P10 to P12 orders imposing penalty in respect of different assessment years.

3. During the course of hearing, the learned Counsel for the petitioner submits that the proper course, as sought to be pursued in terms of Rule 17(19) of the Kerala Value Added Tax Rules has not been complied with by effecting necessary publication and sending proper communication after cancellation of registration of the petitioner. The said rule reads as follows:

Rule 17(19):

"(19) Where a certificate of registration is cancelled, the registering authority shall issue to the dealer concerned a notice in Form No. 5B and shall publish the details in at least two leading dailies in the State and also in the website of the Commercial Taxes Department".

4. After hearing both the sides, this Court finds that even if publication has not been effected after cancellation of the registration, that cannot come to the rescue of the petitioner, so far as the purpose of the rule is something else, to make others vigilant in dealing with or transacting with the persons like the petitioner, whose registration has been cancelled.

5. Regarding absence of proper notice before cancellation of registration, the learned Government Pleader points out that a notice was originally sent to the petitioner by registered post, in conformity with the statutory requirements, particularly as per the mandate of Section 88 of the Kerala Value Added Tax Act, but the same was returned "unclaimed". Thereafter, a further notice was sought to be served by ''affixture'' and as the petitioner did not turn up, the proceedings were finalised.

6. This Court finds that the challenge now raised from the part of the petitioner with reference to the absence of effective opportunity before cancellation of registration is not liable to be entertained by this Court. This however will not disable the petitioner to have the registration restored, if so desired, more so, in view of the communication issued to the petitioner by way of Ext. P14.

7. Coming to the scope of Rule 24D of the KVAT Rules, there is a prayer for the petitioner to declare the said Rules as only declaratory and not mandatory. The learned Sr. Counsel submits that filing of return ''Online'' is not at all mandatory as per the statute and it is always a matter of option for the assessee. This Court finds that the said proposition cannot be correct or sustainable in view of amendment of the statute by way of introduction of Section 93A (Electronic filing and payment) of the KVAT Act with effect from 01.04.2012 as per Act 16 of 2012.

The said provision reads as follows:

"93A. Electronic filing and payment:-

(1) The Government may require the assessees to file returns, forms and other statements to be submitted by him under this Act and make the payment of tax, fee or other amounts due under this Act, electronically through the official website of the Commercial Taxes Department.

(2) Notwithstanding anything contained in Section 92, the Commissioner may, for the purpose of implementation of electronic filing of returns, forms and other statements or electronic payment of tax, fee or other amounts, by notification in the Gazette, make suitable modifications in the forms prescribed under this Act and make necessary changes in the manner of submission and authentication of such returns, forms and other statements. The modifications or changes so made shall be published in the website of the Commercial Taxes Department also and in such other manner as the Commissioner may deem fit."

8. In the above circumstance, this Court finds that the relief sought for as per the first prayer is also not liable to be entertained by this Court, in view of categoric stipulation under Section 93A. The rest is with regard to the correctness and sustainability of the impugned orders by way of assessment as well as penalty. The petitioner is having an effective remedy as provided under the statute, more so when the facts and figures require to be considered by the competent authority with reference to the relevant records. This cannot be an exercise to be pursued by this Court, invoking the discretionary jurisdiction under Article 226 of the Constitution of India.

In the said circumstance, the petitioner is relegated to avail the statutory remedy, if aggrieved of Exts. P5 to P12 and P14 orders. Without prejudice to the rights and liberties of the petitioner to pursue statutory remedy in this regard, interference is declined and the writ petition is dismissed.

