(2021) 01 KL CK 0606

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28848 Of 2020

Alex Varkey	APPELLANT
Vs	
Assistant Commissioner And Ors	RESPONDENT

Date of Decision : 28-01-2021

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 25(1), 88

Citation : (2021) 01 KL CK 0606

Hon'ble Judges : A.M. Badar, J

Bench : Single Bench

Advocate : S. Anil Kumar, Rahul A, Aparna Anil, Thushara James, Anil Kumar Sivapalan

Final Decision : Allowed

Judgement

1. Heard both sides.

2. By this petition, the petitioner is praying for quashing and setting aside the assessment order at Ext.P7 for assessment years 2011-2012 passed by

the Assistant Commissioner (WC), Department of Commercial Taxes, Ernakulam on the ground that principles of natural justice were not followed

while passing the same.

3. The learned counsel appearing for the petitioner drew my attention to the Registration Certificate at Ext.P1 as well as the intimation given by the

firm to the respondent regarding closure of business with effect from 31.03.2015 (Ext.P5). On the basis of these documents, it is argued that while

passing the assessment order, the respondent has failed to adhere to the principles of natural justice as no notice was served on either the firm or its

partners. It is urged that the partner named Rema Baindur, to whom notice was allegedly served had left India and the so called service is not good.

4. At against this, the learned Government Pleader relying on Section 88 of the Kerala Value Added Tax argued that notice was sent by registered

post to the first partner on her last known place of residence or business. According to the learned Government Pleader, pre-assessment notice was

also served on the firm on the address available with the respondent and therefore, this cannot be a case of breach of principles of natural justice.

5. I have considered the submissions so advanced and perused the materials placed before me.

6. The certificate of registration of the firm of which the petitioner is a partner shows local address of Kochi. However, by communication at Ext.P5,

the firm had duly intimated the respondent authorities that the firm has stopped its business with effect from 31.03.2015 and therefore, KVAT

registration of the firm be cancelled. The communication at Ext.P5 shows that the same was duly acknowledged by the respondent department.

7. As against this, the assessment order under Section 25(1) of the KVAT Act, 2003 for the assessment year 2011-2012 shows that the pre-

assessment notice was sent to the local business address of Cochin apart from the address of the first partner of the firm which is House No. 110

Benaka Towers Apartments, No.16 â??Dâ? Main, HAL II Stage, Kodihalli, Indira Nagar, Bangalore. The registered partnership deed shows address

of the principal place of business of the partnership firm as No.60, 3A, 3rd Floor, Century Apartment 100 Ft Road, Indiranagar, Bangalore-5600038.

The pre-assessment notice was not sent on this address of the firm. The assessment under Section 25(1) of the KVAT Act is the assessment in

respect of the firm. As no notice was sent to the firm prior to assessment under Section 25(1) of the KVAT Act, 2003, it cannot be said that the

principles of natural justice were duly followed while making assessment at Ext.P7.

In the result, the petition is allowed. The impugned assessment order at Ext.P7 is quashed and set aside. The matter of assessment under KVAT Act,

2003 for the year 2011 is remitted back to the respondent Authority and the respondent Authority is permitted to effect assessment after following due

process of law. The petitioner and all concerned parties is to appear before the respondent authority on 15.02.2021 at 11.30 am.