(2014) 07 KL CK 0129

In the High Court Of Kerala

Case No : WP(C). No. 17391 of 2014 (Y)

AMV Infrastructure and Properties (P) Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 16, 16(10), 20(1), 67

Citation : (2014) 07 KL CK 0129

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Saiby Jose Kidangoor, Advocate for the Appellant; Shoba Annamma Eapen, Sr. Government Pleader, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved by the cancellation of registration made as per Exhibit P4. The petitioner contends that the petitioner was incorporated as a Private Limited Company, with the object of carrying on the business of construction of villas and buildings. Though the petitioner-Company was incorporated on 01.10.2010, no registration under the Kerala Value Added Tax Act, 2003 [for brevity "KVAT Act"] was sought for, since the petitioner did not commence its business.

2. In 2012, the petitioner was granted a building permit from the Cochin Corporation for its project, as is evidenced by Exhibit P2. However, even then the petitioner did not seek for registration under the KVAT Act, since the petitioner was intending to construct the said building in its own property and there was no transfer of property in goods intended, either by way of outright sale or by way of works contract.

3. Subsequently, in the year 2013 the petitioner applied for registration under the KVAT Act, which was granted after carrying out an inspection. But, however, later on notice was issued, as evidenced by Exhibit P3, stating that the petitioner had deliberately failed in filing the statutory returns for the return periods 2010-11 to 2013-14 as prescribed under Section 20(1) of the KVAT Act. Exhibit

P3 threatened cancellation of the registration on the ground that such failure on the part of the dealer, to file returns for the earlier periods, is a good and valid reason for cancellation under Section 16(10) of the KVAT Act read with Rule 17(18) of the KVAT Rules, 2005. The petitioner failed to respond to the notice and, hence, the cancellation was effected by way of Exhibit P4.

4. The petitioner would challenge Exhibit P4 on the ground that the failure to file return was only an omission and there was no business carried on by the petitioner except one transaction in the year 2012-13. With respect to the transaction in the year 2012-13 and the subsequent year, the petitioner pleads an omission in so far as the return having not been filed within time.

5. The learned Government Pleader has filed a statement, wherein the issuance of registration is admitted. The application for online registration, produced as Annexure R3(a), shows the petitioner''s specific declaration, as to the date of commencement of business, as 01.10.2010. Hence, going by the proviso to sub-section (2) of Section 16, the registration is deemed to have been granted with effect from the date of commencement of business and the petitioner is obliged to file returns for the periods commencing from that date. It is the submission of the Department that, despite repeated reminders and the petitioner itself undertaking to file returns for the period up to 31.12.2013 on or before 27.03.2014, by Annexure R3(b), the petitioner failed to do so. It was in such circumstance that the officer attempted cancellation of the registration. The learned Government Pleader contends that, in fact, now the petitioner would be proceeded against for penalty under Section 67 of the KVAT Act for carrying on the business without registration and without payment of tax.

6. The officer cannot be faulted for having initiated the proceedings, especially since it was due to the petitioner''s failure to file returns and pay tax, as was mandated by the taxation enactment. The mere failure to file returns cannot be considered to be good and sufficient reason; as has been enumerated in sub-rule (18) of Rule 17 of the KVAT Rules. The learned Government Pleader alertly points out sub-clause (iv) of sub-rule (18) of Rule 17, which reads as follows:

(iv) - Where the dealer has not been paying the tax collected by him to Government as required by the Act or these rules consecutively for a period of three returns periods and/or has failed to furnish any security or additional Security demanded by the registering authority.

7. Even looking at the sub-clause, it could only be understood as a case wherein there is wilful default to pay tax, collected by the dealer, consecutively for a period of three return periods. An authoritative pronouncement on that count may not be necessary in the instant case. The dealer obtained registration herein only in March, 2014. The returns, which ought to have been filed by the dealer, related to the earlier periods, since the dealer is declared to have commenced the business from 01.10.2010. In such circumstance, even sub-clause (iv) of sub-rule (18) of Rule 17 cannot be relied on by the State to contend that the returns

were not filed as stipulated in the KVAT Act and the Rules, since the obligation to file the returns for the earlier periods arose only on the subsequent registration granted.

8. In any circumstance, now an impasse has been created, in so far as interdicting the petitioner from carrying on any business, which definitely cannot be the consequence intended by the taxation enactment. In the above circumstance, only considering the peculiar facts of the aforesaid case, the cancellation of registration attempted as per Exhibit P4 would stand set aside. The Assessing Officer is directed to re-activate the system, in so far as, the registration of the petitioner within a period of three weeks from today. The petitioner shall, on such re-activation, file the returns and pay tax as provided under the KVAT Act and the Rules within three weeks therefrom, failing which the Assessing Officer would be entitled to proceed against the petitioner as per the KVAT Act and the Rules, for assessment as also for penalty, if the Assessing Officer deems it fit.

Writ petition is allowed on the above terms. Parties are left to suffer their respective costs.