(2014) 05 KL CK 0021

In the High Court Of Kerala

Case No : W.P. (C) No. 3304 of 2014

Archana Agencies APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:
Constitution of India, 1950 — Article 265

Citation : (2014) 2 KHC 360 : (2014) 2 KLT 715

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : K.T. Shyamkumar and M.S. Kiran, Advocate for the Appellant; K.T. Lily, Government Pleader, Advocate for the Respondent

Judgement

1. Petitioner is a registered dealer under the Kerala Value Added Tax Act. Against Ext. P1 assessment order for the year 2011-12, he had preferred Ext. P2 appeal and Ext. P3 stay petition before the 2nd respondent. The 2nd respondent thereafter proceeded to consider Ext. P3 stay petition and after hearing the petitioner passed Ext. P7 order wherein he has directed the petitioner to remit 30% of the balance tax and interest demanded as a condition for a grant of stay of recovery of the balance amounts due from the petitioner. The Appellate Authority in this case has passed a conditional order of stay directing the petitioner to pay 30% of the amounts due as per the assessment order as a condition for grant of stay against recovery of the balance amounts pending final disposal of the appeal.

2. On a perusal of the stay order, it is seen that while the Appellate Authority admits that there is a prima facie case established for the grant of a conditional stay, the order does not disclose the basis for insisting on the payment of even 30% of the dues conferred against the petitioner. In my opinion, a quasi judicial authority considering a stay application of an assessee under a taxation statute has to give reasons to support the order directing payment of any amount towards tax/interest pending disposal of the appeal. He has to bear in mind the

Constitutional Mandate under Art. 265 of the Constitution that there shall be no levy or collection of tax except by the authority of law. In taxation matters therefore, more than in any other matter, reasons must support not only the decision to waive payment of amounts due but also the decision that directs an assessee to make some payments pending consideration of the appeal. No doubt, this would require the adjudicating authority to look into the merits of the matter for the purposes of deciding the extent of waiver from payment that he can grant to an assessee while deciding the conditions for the grant of stay. This, however is a legal requirement that must be read into the exercise of the statutory discretion by the said authority.

3. The requirement of giving reasons, albeit minimal in stay orders, especially in matters of taxation cannot be understated. The duty to give reasons for a decision is one that is conducive to fairness in judicial/quasi judicial/ administrative action. Reasons for a decision are required to address the primary concern of an assessee in knowing what weighed with the authority in question while deciding the issue against him. The practice accords with the concept of fairness in action and recognises the dignity of the individual whose rights are affected by the decision in question. The obligation to provide reasons for a decision will also ensure that the decision maker acts within the limits of his discretion and takes into account only those factors as are relevant to the decision making process. No doubt it could be argued that the imposition of a duty to provide reasons for every decision might lead to stifling or unduly burdening the administration but this is an aspect that has to be weighed against the rights of the person affected. In taxation matters where the Constitution of India itself gives ample indication that the rights of a citizen against arbitrary taxation are zealously guarded, I would think that the requirement of giving reasons to support even a conditional order of stay would not tantamount to unduly burdening the administration. The law has necessarily to strike a balance between the necessity to govern and the rights of those governed. For the reasons stated above, I feel that it would only be just and proper for this Court to set aside Ext. P7 order of the 2nd respondent and direct the said respondent to consider the stay application preferred by the assessee afresh after affording him an opportunity of being heard in the matter. The 2nd respondent shall comply with this direction within a period of two months from the date of receipt of a copy of this judgment. Needless to say, pending fresh consideration of the stay petition and communicating the order passed thereon to the assessee, coercive steps for recovery of the amounts due from the assessee pursuant to the assessment order shall be kept in abeyance.

With these directions, the Writ Petition is disposed of.

