(2010) 03 KL CK 0041

In the High Court Of Kerala

Case No : W.A. No. 298 of 2010

Assistant Commissioner (Assessment) APPELLANT

Vs

Martin and Harris Pvt. Ltd. RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 23B

Citation : (2010) 2 ILR (Ker) 827 : (2010) 2 KLT 458 : (2011) 42 VST 496

Hon'ble Judges : P.R. Raman, Acting C.J.;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Vinod Chandran, Special Government Pleader, for the Appellant; S.K. Devi, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The short question raised in the Writ Appeal is whether the learned Single Judge was justified in directing the appellant to consider grant of Amnesty benefit to the respondent for settling the arrears of tax due for the year 1995-1996.

2. We have heard the Special Government Pleader appearing on the behalf of the appellant and the learned Counsel appearing for the respondent-assessee.

3. The contention raised by the Special Government Pleader is that the respondent has violated conditions of grant of Amnesty in as much as they have not paid the arrears of tax in terms of Sub-clause (4) of Section 23B of the K.G.S.T. Act, and so much so, the benefit granted was withdrawn under Sub-clause (5). The learned Judge, however, allowed the claim because respondent''s application for rectification of assessment was pending, when the application for Amnesty was filed.

4. Counsel for the respondent-assessee contended that rectification sought was in regard to short credit of tax paid and if it was granted by the Officer, payment under Amnesty Scheme would have been made on due dates. However, on going

through the various provisions of Section 23B of the K.G.S.T. Act, we find that Amnesty benefit is provided for settlement of liability on condition that the reduced amount shall be paid by the assessee within the strict time frame, as provided under Sub-clause (4) of Section 23B of K.G.S.T. Act. Further, it is clear from Sub-clause (7) that if there is dispute in regard to assessment or demand of tax, either on appeal, revision or rectification, the benefit could be claimed by the assessee by way of claim or refund of tax paid under Amnesty Scheme. Sub-clauses (4) and (7) make it abundantly clear that the essential condition for grant of Amnesty is payment of tax strictly within the time frame provided thereunder and if the assessee has any contest against the settled liability, it is free to pursue the same, after payment under the Amnesty Scheme and claim refund. In this case, assessee admittedly did not remit the amount due under Amnesty Scheme within the time provided under the statute, and therefore, benefit was rightly declined. We do not find any justification for the learned Single Judge to extent the benefit of Amnesty Scheme to the assessee on the ground that assessee''s rectification application was pending, at the time when claim for Amnesty benefit was made.

5. We, therefore, allow the the Writ Appeal in part, by vacating that part of the direction of the learned Single Judge to consider grant of Amnesty benefit to the respondent- assessee. However, short of grant of Amnesty benefit, assessee is free to get the assessment revised, in terms of the remand by the learned Single Judge.

The Writ Appeal is allowed to the limited extent, stated above.

