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(2011) 11 KL CK 0005

In the High Court Of Kerala

Case No : W.A. No. 1370 of 2011

Commercial Tax Officer, Irinjalakkuda and Others APPELLANT

Vs

C.U. Mathai RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 25

Citation : (2012) 51 VST 253

Hon'ble Judges : C.N. Ramachandran Nair, Acting C.J.;P.S. Gopinathan, J

Bench : Division Bench

Advocate : Boby John, Special Government Pleader for Taxes, for the Appellant; K.B. Mohammed Kutty and P.N. Damodaran Namboodiri, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair Actg. C.J.

1. Writ appeal is filed by the State challenging the impugned judgment of the learned single judge See page 243 supra declaring reassessment completed u/s 25 of the Kerala Value Added Tax Act as invalid for the reason that a personal hearing is not granted to the respondent. We have heard the learned Government Pleader appearing for the State and also the learned senior counsel Dr. Mohammed Kutty appearing for the respondents. Section 25 makes it clear that escaped turnover can be assessed to tax only after giving reasonable opportunity to the dealer to raise objection against the proposal. In this case, admittedly, exhibit P24 notice was issued by the assessing officer to the respondent giving opportunity to file written reply to the proposal for revision and also by specifically stating in the notice that the dealer will be heard on date of filing the objection. In the reply filed vide exhibit P26 it is seen that the dealer has not requested for any personal hearing on the other hand what he has stated in the reply is as follows :

I request you to please consider the above points and complete the assessments

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as per the books of accounts regularly maintained. Otherwise I will suffer irrevocable damage and injury.

2. The question whether a personal hearing is required on the written reply filed is a matter of choice of the dealer against whom proceeding is initiated u/s 25. Therefore, on receipt of notice u/s 25 the dealer is free to file detailed reply, produce documentary evidence and statement of accounts in support thereof and request the officer to consider his written objections and documents and decide the matter. On the other hand, if the dealer wants an opportunity of personal hearing to explain his stand as stated in the written reply and accounts and evidence to the officer he is free to ask for it. In this case, it is seen that the respondent inspite of given a specific opportunity of filing written reply and for a hearing on the date of filing the reply did not opt for a personal hearing. If the respondent was not able to appear for personal hearing on the date of filing the reply it was absolutely open to him to request the officer to give a posting date for hearing him. However, on going through the reply extracted above, we notice that inspite of the specific opportunity granted for hearing the respondent has neither availed nor requested for a posting for hearing. On the other hand, he left it to the officer to decide the matter after considering his objections filed in writing. We, therefore, do not find any justification for the single judge1 to interfere with the assessment order on the ground of violation of natural justice. The only remedy available to the respondent against the assessment is to file an appeal and contest the matter before the appellate authority. Though we uphold the requirement of personal hearing if desired by the party, on the facts of this case, we find that the party has waived it though the officer granted it. Writ appeal is, therefore, allowed vacating the judgment of the learned single judge1 and by restoring the reassessment. However, since the single judge1 interfered with the matter the respondent is granted two weeks time from today to file appeal against the reassessment.

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