(2011) 06 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6989 of 2011 (W)

C.U. Mathai — APPELLANT

Vs

Commercial Tax Officer, Irinjalakkuda and Others — RESPONDENT

Date of Decision : 30-06-2011

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

Citation : (2012) 51 VST 243

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : P.N. Damodaran Namboodiri, for the Appellant; V.K. Shamsuddin, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.K. Abdul Rehim, J.—Exhibit P27 order of assessment finalised against the petitioner with respect to the year 2009-10 is under challenge in this writ petition. Earlier the first respondent had issued exhibits P1 to P7 order of assessment pertaining to various months from April 2009 to October 2009, which were challenged in appeals by the petitioner. Through exhibits P8 order the first appellate authority had confirmed the assessments. The matter was taken up before the Appellate Tribunal in further appeal and in exhibit P18 order the Tribunal had set aside the assessments and remanded for fresh consideration by the assessing authority, with specific directions issued for granting opportunity to the petitioner to file objections before the assessing authority. The assessing authority was directed to consider such objections and to pass fresh assessment with respect to the months concerned, in accordance with law. The petitioner was directed to submit objections within a period of two months from the date of receipt of a copy of the order. Pursuant to remand made by the Appellate Tribunal, the first respondent had issued proposal notice as evident from exhibit P24, calling for objections within 15 days of the receipt of the said notice. In exhibits P24 it was also mentioned that, "the dealer was also given an opportunity of being heard in this matter in my office at the time of filing the objection". It is stated that the petitioner had submitted detailed objection against the proposal as evident from exhibit P26. But the assessing authority had discarded those objections and finalised the assessment through exhibit P27.

2. The contention of the petitioner is that exhibit P27 order of assessment is passed in violation of the mandatory procedure prescribed u/s 25 of the Kerala Value Added Tax Act, 2003 (the KVAT Act) and in violation of principles of natural justice. Specific contention of the petitioner is that the assessing authority has failed in affording opportunity of personal hearing to the petitioner, before discarding the objections. It was further contended that the petitioner was not afforded with an opportunity to produce books of account in support of the contentions raised and to substantiate those contentions. Hence it is contended that the order is violative of the procedure prescribed u/s 25(1) of the KVAT Act. The learned counsel for the petitioner placed reliance on a decision of this court in Suzion Infrastructure Service Ltd. Vs. The Commercial Tax Officer (W.C.), , in support of such contentions.

3. Heard learned Government Pleader appearing for the respondents. It is contended that the petitioner was given sufficient opportunity for personal hearing through exhibit P24 notice and all the contentions raised in the objections were elaborately considered by the assessing authority.

4. Considering the rival contentions, I take note of the fact that in exhibit P24 no specific date was fixed for personal hearing. It is held in the decision cited above that the opportunity of personal hearing contemplated u/s 25 is not an empty formality. It is held that, before discarding objections raised by the assessee, an opportunity of personal hearing shall be afforded. It is clarified that issuance of notice in the nature of exhibit P24 will not be sufficient for a proper compliance with the requirement u/s 25(1). It should be an opportunity of personal hearing afforded after filing of the objections, in case the assessing authority is intending to discard those objections.

5. In view of the findings as above, I am of the view that the impugned order of assessment will not stand as sustainable in law. Hence I am inclined to allow this writ petition and exhibit P27 order is hereby quashed. The first respondent is directed to finalise the matter afresh after affording reasonable opportunity of personal hearing to the petitioner and also after affording opportunity to produce books of account in support of the contentions raised in order to substantiate such contentions. Fresh order of assessment in this regard shall be issued, as early as possible, at any rate with one month from the date of receipt of a copy of this judgment.