(2019) 05 KL CK 0039

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 27209 Of 2018

Dileep Jose	APPELLANT
Vs	
District Collector	RESPONDENT

Date of Decision : 28-05-2019

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

Citation : (2019) 05 KL CK 0039

Hon'ble Judges : S.V.Bhatti, J

Bench : Single Bench

Advocate : Joby Jacob Pulickekudy, K.Bincymol, N.B.Fathima Sulfath, Anil George, K.S.Sumeesh, M.M. Jasmine

Final Decision : Disposed Off

Judgement

1. Heard Sri.Joby Jacob Pulickekudy, the learned counsel for the petitioner and Smt.M.M.Jasmin, the learned Government Pleader.

2. The petitioner is a builder in construction activity and a registered dealer under KVAT Act. The 4th respondent issued notice dated 08.05.2018 under Section 25(1) of the Act. On 15.05.2018 the notice is received by the petitioner. The undisputed circumstance is that on 29.05.2018 the matter was taken up and considered by 4th respondent. The case of 4th respondent is that the petitioner in fact was heard on 29.05.2018 and the challenge to assessment order dated 08.06.2018 on the ground that the assessment order is vitiated as violative of principles of natural justice is untenable.

3. The case of petitioner is that on 01.06.2018, the petitioner filed the objections. The petitioner is to be heard on the objections filed by him and the assessment proceedings cannot be completed by referring to the so called hearing on 29.05.2018.

The 4th respondent filed counter affidavit and the counter affidavit is assertive about the happenings on 29.05.2018, but does not deal with affording opportunity to petitioner after written objections against the proposed reliefs were filed on 01.06.2018. The learned counsel for the petitioner points out that the assessment order adverts to objections raised on 01.06.2018, without giving an opportunity, considered these objections behind the back of petitioner hence the order impugned is illegal and unsustainable.

4. The learned Government Pleader submits that from the record it is evident that on 29.05.2018 the petitioner was given opportunity, but no opportunity is given to petitioner after receiving the objections dated 01.06.2018.

I have perused the assessment order and prima facie of the view that the 4th respondent failed to give opportunity of hearing to petitioner by issuing a separate notice of hearing after acknowledging objections dated 01.06.2018. The said omission, vitiates the assessment order dated 08.06.2018 is vitiated and liable to be set aside and accordingly set aside. The matter is remitted to 4th respondent for consideration and disposal in accordance with law. This Court for convenience directs the petitioner to appear before 4th respondent with a copy of this judgment on or before 21.06.2019 and further date is given for considering the objections. In his first appearance before 4th respondent, the petitioner if so advised files additional objections together with records if any on which the petitioner relies on in this behalf. The enquiry is completed and orders are passed expeditiously and preferably within three months from the date of receipt of a copy of this judgment.

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 TRUE COPY OF NOTICE DATED 08.05.2018 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P2 TRUE COPY OF THE LETTER DATED 1ST JUNE 2018 ISSUED BY THE 4TH RESPONDENT

EXHIBIT P3 TRUE COPY OF THE LETTER DATED 14.06.2018 ISSUED BY THE 4TH RESPONDDENT

EXHIBIT P4 TRUE COPY OF ORDER NO.32072093109/2011-12 DATED 08.06.2018 PASSED BY THE 4TH RESPONDENT

EXHIBIT P5 THE NOTICE OF DEMAND ISSUED ALONG WITH EXT.P4 DATED 08.06.2018

EXHIBIT P6 TRUE PHOTOCOPY OF DEMAND NOTICE UNDER SECTION 7 OF THE REVENUE RECOVERY ACT DATED 30.07.2018 RESPONDENT'S/S EXHIBITS: NIL

