(2009) 01 KL CK 0020

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31720 of 2008 (A)

Eldhose Kuriakkose APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 17D

Citation : (2009) 25 VST 122

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Advocate : K.B. Mohammed Kutty and K.M. Firoz, for the Appellant; C.K. Govindan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.M. Joseph, J.—The petitioner challenges exhibit P1 assessment order and exhibit P2 demand notice. By exhibit P1, the petitioner is assessed purportedly by the fast track team u/s 17D of the Kerala General Sales Tax Act, 1963. Exhibit P2 is the demand notice.

2. I heard Dr. K.B. Mohammed Kutty, learned Senior Counsel appearing for the petitioner and also the learned Government Pleader. The main contention is based on exhibit P4 judgment of the Division Bench of this Court as per which pre-assessment notice is to be given. In the counter-affidavit, it is not disputed that pre-assessment notice was not issued and also it is stated that since the assessment was completed by the fast track team, the rate of tax is 5.6 per cent which was correctly applied and it was brought to the notice of the authorised representative and the assessment was completed without issuing pre-assessment notice. A reply affidavit is filed, wherein, it is stated, inter alia, as follows:

The Statement in the counter-affidavit that the higher rate of tax brought to the notice of my authorised representative is incorrect. There was no such instance.

My authorised representative has not given any return statement accepting the rate of tax at 5.6 per cent. He submitted that the statement in the counter-affidavit is therefore clearly incorrect. I have serious objection to levy of tax at the rate of 5.6 per cent instead of the correct rate of 2.2 per cent.

3. In the light of the pleadings, I would think that having regard to the judgment of this Court and also the dictate of the circular, the petitioner should have been issued a pre-assessment notice. It is to be noticed that in Circular No. 17 of 2007, Clause 20 reads as follows:

Even though the assessment order shall have to be signed by all members of the team, the pre-assessment notices approved by the team need not be signed by all team members, and can be signed by any member on behalf of the team.

4. The learned Government Pleader fairly submits that exhibit PI order is signed only by one person. This is a clear violation of the circular. In the light of these circumstances, the writ petition is only to be allowed. Accordingly, the writ petition is allowed and exhibits PI and P2 are quashed. The matter will be re-done in accordance with law within two months from the date of receipt of a copy of this judgment.