(2017) 03 KL CK 0037

In the High Court Of Kerala

Case No : W.P(C). No. 38942 of 2016

Jessy Mathews APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:
Constitution of India, 1950 — Article 226
Kerala Value Added Tax Act, 2003 — Section 25(1), Section 42(3)

Citation : (2017) 2 ILRKerala 170 : (2017) 1 KLT 1083

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : S.K. Devi and Santhosh P. Abraham, Advocates, for the Petitioner; Sri. V.K. Shamsuddin, Government Pleader, for the Respondents Nos. 1 to 3

Final Decision : Allowed

Judgement

K. Vinod Chandran, J—The petitioner is concerned with Exhibits P1 and P2 assessments, which stood re-opened solely for the reason that audited statements under Section 42 of the Kerala Value Added Tax Act, 2003 [for brevity "KVAT Act"] in Form 13 and Form 13A was not filed as stipulated in the provision. The petitioner relies on the judgment of a Division Bench of this Court, produced as Exhibit P5 in O.T.Rev.No.49 of 2014 dated 25.09.2014.

2. The learned Government Pleader, however, contends that the question was not decided by the Division Bench and the revision went against the State, only on account of the State having not raised that specific ground before the Tribunal. It is also submitted that amendments, brought by way of sub-section (3) of Section 42 by the Kerala Finance Act, 2016, would take care of the situation and would invalidate the declaration, if at all any made, in Exhibit P5.

3. The petitioner, admittedly, had not filed the audit report as on the date of re-opening of assessment. Now the petitioner is said to have filed the audited statements, which are produced as Exhibits P3 and P4.

4. The Division Bench in Exhibit P5 clearly found that Section 25(1) of the KVAT Act does not enable the Revenue to complete a best judgment assessment on the ground that the assessee has not filed audited statements in Form Nos.13 and 13A. The specific contention taken by the Government before the Division Bench, that if audited statements in Forms 13 and 13A are not filed, the entire turnover has to be taken as escaped turnover; was specifically rejected. It was also found that the said argument raised before the Division Bench by the Government was never addressed before the Tribunal. Before the said finding, the Division Bench had specifically negatived the plea of the Government and, hence, it cannot be said that the revision of the Government was merely rejected for reason of the question having not been raised before the Tribunal. The issue hence is no longer res integra for reason of the Division Bench having considered the plea and rejected it.

5. The amendment, by insertion of sub-section (3) under Section 42 is as hereunder:

"42(3) Notwithstanding anything to the contrary contained in this Act, if a dealer,

(i) fails to file audited accounts referred to in sub-section (1), or

(ii) fails to file revised annual return rectifying the mistake or omission, along with the audited statement of accounts and certificate or if the variance in the audited statement of accounts with the returns is not satisfactorily explained in the reconciliation statement prescribed, or

(iii) fails to file the annexures, statements, certificates, declarations, including the statutory declarations to be filed under the Central Sales Tax Act, 1956 which are required to be fled along with the returns to prove the correctness of the concessional rate of tax, exemptions and exports claimed in the returns, or

(iv) fails to declare any sale, purchase or interstate stock transfer as evidenced from the documents prescribed under section 46 available with the assessing authority in the sales and purchase lists filed along with the returns, the assessment of such dealer for the relevant year for the purpose of section 25 shall be treated as pending and the time limit mentioned thereunder shall not be applicable in such cases".

6. Section 25(1), enabling assessment of escaped turnover, having not been amended, the legal infirmity pointed out by the Division Bench has not been rectified by the aforesaid amendment. Further, the inserted clause would only indicate that in such circumstances where the audited statements are not filed, the limitation under Section 25(1) would not apply. The non-filing of audited statement even now cannot form a reason for re-opening the assessments as such. Nor is there a provision to deem the returned turnover as escaped when the audited statements are not filed.

7. In the above circumstances, the assessment orders passed at Exhibits P1 and P2 are set aside. The assessments being of the years 2012-13 and 2013-14, the

Assessing Officer would look into the returns as also the audit reports and audited statements and decide on the re-opening, on any valid grounds if any; on which there is no observation made by this Court. The re-opening if so attempted shall be untrammelled by any observations made herein above.

The writ petition is allowed.

