(2014) 05 KL CK 0061

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 4969 of 2010 (U)

Joshi Basu APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 26-05-2014

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 17(4), 17(5), 19(1)

Citation : (2014) 48 GST 861

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : E.P. Govindan and G. Deepa, Advocate for the Appellant; Shoba Annamma Eapen, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved by Ext.P5(a) and P6 issued by the 1st respondent allegedly without complying with the directions in Ext.P2. The petitioner was an assessee under the Kerala General Sales Tax Act, 1963 (for short KGST Act only) and the present dispute arises with respect to the assessment, in the year 1999-2000. The petitioner admittedly filed a return under Section 17(4) of the KGST Act which was accepted by the Assessing Officer as is revealed in Ext.P1. Subsequently, however, on the ground that certain vouchers, regarding the payment of unloading charges by the petitioner, recovered from third party was not accounted in the regular books of accounts; re-opening of assessment completed under Section 17(4) was proposed. The same was carried out under Section 19(1) read with Section 17(5) as is evidenced from Ext.P1. Additions were made on the alleged suppression of purchase of 1220 bags of cement @ Re. 1/- for unloading one single bag. The suppression was alleged on the ground that the coolie charges revealed from the vouchers, were not disclosed in the books of accounts. Ext.P1 was challenged in appeal, in which estimation was made, deleting the addition made to the equal amount of alleged suppression, confining the addition to the actual suppression detected. The petitioner, however, still aggrieved by the addition made, was before this Court in a revision which was disposed of by Ext.P2. Ext. P2 directed production of books of account before the authority to establish before the officer that there are no amounts expended as unloading charges; which do not correspond to accounts of the cement purchased.

2. Subsequent to the judgment the petitioner also produced books of accounts as is revealed from the extract produced as Ext.P3, wherein the 1st respondent has made an endorsement; of having checked the same on 09.07.2009. The contention of the department raised in the additional counter affidavit is that, the said records were produced earlier itself and that since no new material was produced there was no reason to review the reopening of the assessments.

3. Exts.P5 and P5(a) orders are the one and the same, insofar as, Ext.P5 merely confirms the earlier order passed and Ext.P5(a) is the regular assessment order passed as stipulated under the KGST Act. On a reading of Ext.P5, it is seen that the Assessing Officer has found that no records for re-computing the liability was produced. The petitioner having produced the books of accounts, necessarily the entries relied on by the petitioner should have been looked into and it should also have been considered as to whether on the dates mentioned in the vouchers, petitioners had accounted coolie charges. No such consideration having been made, Exts.P5 and P5(a) cannot be sustained. The Assessing Officer cannot, merely on the ground that the records produced were produced earlier, desist from a consideration of the issues as directed in Ext-.P2 judgment. The Assessing Officer, on production of the books of account necessarily has to verify the various heads under which the expenditure has been accounted.

4. In the instant case, the learned counsel for the petitioner has produced the books of accounts before this Court, which reveals lorry charges and coolie charges having been separately accounted in the books. Furthermore, when the Assessing Officer relies on vouchers obtained from a third party, necessarily, proceedings have to be concluded in accordance with the principles laid down in State of Kerala Vs. K.T. Shaduli Yusuff etc., . In the instant case, but for a summons issued, the Assessing Officer has not attempted to obtain the presence of the third party from whose possession vouchers are said to have been recovered. An affidavit filed by the office bearer of the Loading and Unloading Workers Union, in the area of business operation of the petitioner is stated to be irrelevant; since the recovered vouchers is of another area viz., Fort, Thiruvananthapuram. Then, necessarily the third party has to be summoned on request for cross-examination and it is not as if the authority does not have the power to enforce attendance. In such circumstance, Exts.P5 and P5(a) are found to be orders issued without complying with the specific directions in Ext.P2. The petitioner shall produce the books of account as also any other documents before the Assessing Officer, within a period of three weeks from the date of receipt of a certified copy of this judgment. The Assessing Officer shall consider the same in accordance with the observations made in Ext.P2 as also the dictum laid down by the Hon''ble Supreme Court in the afore cited decision. Exts.P5, P5(a) and P6 are set aside to facilitate reconsideration.

Writ petition disposed of as above. No costs.

