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(2012) 10 KL CK 0068

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 33763, 33832, 34462 of 2010 and W.P. (C) No''s. 522, 541, 1212, 2170, 2171, 2522, 2575, 3018, 4224, 4413 and 4622 of 2011

K. Rajan, Moundanam Challa, Pappanchalla, Muthalamada, Govindapuram P.O., Palakkad District — APPELLANT

Vs

The Intelligence Officer (IB), Commercial Taxes, Mattancherry at Mini Civil Station Aluva. Pin - 683101, The Commercial Tax Officer, Chittur, Palakkad District. Pin - 678101, The Commissioner of Commercial Taxes, Commercial Taxes, Kerala, Vikas Bhavan P.O. Trivandrum. Pin - 695001 and The State of Kerala — RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 67

Citation : (2012) 10 KL CK 0068

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : E.P. Govindan and Smt. G. Deepa, for the Appellant; S. Sudhish Kumar, Senior Government Pleader, for the Respondent

Judgement

Justice Antony Dominic

1. The issues raised in these writ petitions are common and therefore, these cases are heard together and are disposed of by this common judgment, treating W.P.(C)No. 33763 of 2010 as the leading case. Petitioner is a poultry farmer. Exts.P1 and P2 are the notices issued u/s 67 of the KVAT Act imposing penalty on the petitioner for the assessment years 2008-2009 and 2009-2010. According to the department, the basis of notices is that the accounts maintained by the petitioner is inaccurate. It appears that on receipt of Exts.P1 and P2 notices, petitioner made Ext.P3 representation to the first respondent requesting that copies of the executive diary and statement, if any, of Mr. A.V. Rajan relied on against him may be issued. It is immediately thereafter that this writ petition

was filed seeking to challenge Exts.P1 and P2 notices and also to require the first respondent to issue copies as sought for in Ext.P3 and to declare that the first respondent has no jurisdiction to proceed against him in view of the judgment of this Court in P. Ramakrishnan v. State of Kerala [1994 KLJ (Tc) 369].

2. I heard the learned counsel for the petitioner and also the learned Government Pleader, who render me the facts in the statement filed on behalf of respondents.

3. In my view, for the disposal of these writ petitions it is unnecessary to enter into the merits of the controversies raised by the parties. A reading of the writ petition shows that what is impugned in the writ petition are mainly Exts.P1 and P2. These are show cause notices calling upon the petitioner to show cause why penalty as provided u/s 67 of the KVAT Act shall not be levied. When such notices are issued, the recipient to the notice is expected to file his reply to the notice, participate in the adjudication and pursue legal remedies in case the final order passed is adverse to him. Instead of doing that, without even filing his reply to the show cause notice, petitioner has chosen to approach this Court.

4. Counsel for the petitioner contended that he is entitled to copies of the documents relied on against him and that these documents are essential for filing an effective reply to the show cause notices. I agree with the learned counsel that principles of natural justice require that in a proceedings initiated against a person, documents relied on against him should either be furnished or at least he should be disclosed the contents thereof. Therefore, when the petitioner made Ext.P3 representation, it is necessary that the first respondent should either issue copies of the documents or at least afford the petitioner an opportunity to peruse those documents. Therefore, I direct that, on the production of the copy of this judgment, the first respondent will deal with Ext.P3 request made by the petitioner in the light of the observations made herein above.

5. It was then contended by the learned counsel for the petitioner that the first respondent does not have jurisdiction to have issued Exts.P1 and P2. This contention was sought to be substantiated by relying on the judgment of this Court in P. Ramakrishnan v. State of Kerala (supra). However relying on SRO No. 1046/2002 issued under the KGST Act, SRO No. 1/2005 issued under the KVAT Act and the judgment of this Court in Star Traders v. Intelligence Officer [(1995) 3 KTR 239], the learned Government Pleader contended that the first respondent was the designated officer competent to initiate the proceedings in question. The submissions made by both sides also show that the correctness of the contention of the petitioner can be decided only after an adjudication. Therefore this is also a contention to be put forth before the first respondent and it is for the first respondent to decide on this issue also. In such circumstances, I do not find any justification to entertain the writ petition. Therefore I dispose of this writ petition with the direction that it will be open to the petitioner to appear before the first respondent, who thereupon shall deal with Ext.P3 in the manner as directed.

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Needful shall be done on Ext.P3 within three weeks of the production of a copy of this judgment. Once this direction is complied with, petitioner will file his replies to Exts.P1 and P2 notices within four weeks. Once replies are filed, first respondent will complete the proceedings in pursuance to Exts.P1 and P2 notices in accordance with law and at any rate within eight weeks thereafter.

W.P.(C) Nos. 33832, 34462 of 2010, 522, 541, 1212, 2170, 2171, 2522, 2575, 3018, 4224, 4413 & 4622 of 2011 are also disposed of in the light of the aforesaid directions.

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