**(2013) 01 KL CK 0033**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) . No. 2252 of 2013

K. Valsala APPELLANT

Vs

Commercial Tax Officer and Another RESPONDENT

**Date of Decision :** 31-01-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226
Kerala Value Added Tax Act, 2003 — Section 24, 25, 95

**Citation :** (2013) 61 VST 416

**Hon'ble Judges :** Antony Dominic, J

**Bench :** Single Bench

**Advocate :** Harisankar V. Menon and Smt. Meera V. Menon, for the Appellant; Shoba Annamma Eapen, Senior Government Pleader, for the Respondent

## Judgement

Antony Dominic, J.—The petitioner is an assessee under the Kerala Value Added Tax Act. In this writ petition, she challenges exhibit P2 order passed against her u/s 25 of the Act. The facts of the case are that, on the basis that the petitioner did not file monthly returns for 2011-12, she was issued exhibit P1 notice u/s 24 of the Act. According to the learned Government Pleader, before the notice was issued, the petitioner was called upon to produce the books of accounts which were not produced. Exhibit P1 notice is dated April 10, 2012 and it was served on the petitioner on April 17, 2012. The petitioner did not file any reply or produce any document contradicting the allegations in exhibit P1. The petitioner also did not appear before the assessing officer on April 24, 2012, the date on which an opportunity of hearing was offered in exhibit P1 notice.

2. Subsequently, the officer who issued exhibit P1 notice was transferred and his successor took charge. Later, the assessment was completed by exhibit P2 dated October 27, 2012. The petitioner challenges this order relying on section 95 of the Kerala Value Added Tax Act, which according to the petitioner obliges the authority to give her an opportunity of hearing if there is a change of incumbent in the office of the first respondent.

 

3. Section 95 of the Kerala Value Added Tax Act reads thus:

95. Change of an incumbent of an office.--Whenever in respect of any proceedings under this Act, any prescribed authority ceases to exercise jurisdiction and is succeeded by another who has and exercised jurisdiction, the authority or officer so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that before proceeding under this section the authority shall give the person affected thereby an opportunity of being heard.

4. A reading of the provision shows that when proceedings are pending and there is a change of officer, the successor can continue the proceedings at the stage where the proceedings were left by his predecessor. As per the proviso, before proceeding u/s 95, the successor shall give the person affected, an opportunity of being heard also. It is relying on the proviso to section 95 that the learned counsel for the petitioner contends that assessment could not have been completed without affording the petitioner an opportunity of hearing.

5. However, I am unable to agree with the learned counsel. This is a case where the petitioner was issued exhibit P1 notice. The allegations in exhibit P1 were not contradicted by the petitioner by filing any reply or producing any documents. The petitioner did not seek any hearing and she also did not appear before the assessing officer on April 24, 2012. It is in this background that exhibit P2 order was passed.

6. Facts therefore show that, in the circumstances of this case, the only option that was available to the assessing officer was to finalise the assessment based on the material available before him. That apart, the petitioner having not filed any reply or produced any documents, had no contention to urge before the assessing officer. Therefore, I am inclined to think that in the circumstances pointed out, the petitioner was not entitled to the benefit of the proviso to section 95 and in any case the absence of such a hearing has not caused any prejudice to the petitioner.

7. In such circumstances, I do not see anything illegal in exhibit P2 justifying interference in a proceedings under article 226 of the Constitution of India. Writ petition is dismissed.

 