(2004) 07 KL CK 0008

In the High Court Of Kerala

Case No : S.T. Rev. No. 119 of 2004

Kay Tee Sons APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Citation : (2006) 146 STC 533

Hon'ble Judges : Cyriac Joseph, Acting C.J.;K.K. Denesan, J

Bench : Division Bench

Advocate : N. Muraleedharan Nair and V.K. Shamusudheen, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Judgement

Cyriac Joseph, Ag. C.J.

1. Having heard learned Counsel for the petitioner and having considered the materials placed on record, we do not find any question of law arising in this revision. Hence we are not inclined to entertain this revision.

2. Learned Counsel for the petitioner points out that though the assessing authority held that inter-State purchases were made by the revision petitioner from M/s. Brindavan Roller Flour Mills Pvt. Ltd., Mysore, the assessee was not given any opportunity to verify the records of M/s. Brindavan Roller Flour Mills Pvt. Ltd., Mysore, or to cross-examine the said consignor. Learned Counsel points out that in annexure D objection to the pre-assessment notice dated January 17, 1997, the assessee had stated that the Intelligence Cell had not given any opportunity to cross-examine the dealer who sold "maida". Learned Counsel also refers to annexure E appeal memorandum wherein it is stated that the assessing authority had gone wrong in estimating the turnover of the appellant by placing reliance on the ledger extracts of a third party without affording the appellant an opportunity to verify the said records and cross-examine the said third party. It is true that the petitioner had taken the ground that he was not given an opportunity to verify the records and to cross-examine the above mentioned

consignor. But the relevant question is whether the petitioner had specifically sought for an opportunity to verify the records and to cross-examine the consignor and whether such request was turned down by the assessing authority or the appellate authority. There is no material placed on record to show that the revision petitioner had specifically requested for an opportunity to verify the records and to cross-examine the consignor. Since no such request was made, obviously there could not have been any denial of the opportunity by the assessing authority or the appellate authority. So long as the revision petitioner did not seek an opportunity to verify the records of the consignor and to cross-examine him, we do not find any illegality in the impugned order. We are justified in taking the above view in the light of the decision of a Full Bench of this Court in M.K. Thomas v. State of Kerala [1977] 40 STC 278. Learned Counsel for the petitioner invited our attention to the decision of a division Bench of this Court in M. Doraiswamy, Krishna Stores, Palakkad v. State of Kerala [2001] 9 KTR 291 and contended that it was not necessary for the revision petitioner to make a specific request for cross-examining the consignor and that it was sufficient that the revision petitioner raised such a ground in the grounds of the appeal before the appellate authority. There is no merit in this contention. The above mentioned decision of the division Bench does not state that the assessee need not make any request. On the contrary, it is only stated in the judgment that where evidentiary material procured from or produced by a third party is sought to be relied upon for showing that the return submitted by the assessee was incorrect and incomplete, assessee is entitled to have the concerned third party summoned as witness for cross-examination. Therefore, we hold that only if the assessee had sought an opportunity to verify the records of the consignor and the cross-examine him and the request was turned down, the assessee can assail the assessment order on that ground.

3. In the above circumstances, the revision is dismissed.

