(2011) 03 KL CK 0002

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8577 of 2011 (V)

K.K. Hameed APPELLANT

Vs

Commercial Tax Officer III and Another RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Citation : (2013) 57 VST 371

Hon'ble Judges : C.K. Abdul Rahim, J

Bench : Single Bench

Advocate : P.N. Damodaran Namboothiri, for the Appellant; V.K. Shamsudhen, Government Pleader, for the Respondent

Judgement

C.K. Abdul Rahim, J.—Exhibit P3 order of assessment finalised u/s 25(1) of the Kerala Value Added Tax Act, 2003 (KVAT Act) with respect to the assessment year 2007-08 is under challenge in this writ petition. The assessment order is challenged without resorting to the remedy of statutory appeal on the ground that the order in question is per se illegal, since the authority had violated the mandatory procedure contemplated u/s 25(1) of the KVAT Act and also violated principles of natural justice. Specific contention raised by the petitioner is that, after filing objections to the proposal notice, the petitioner was not afforded with any opportunity of hearing and the assessing authority unilaterally discarded the objections, without following the procedure contemplated.

2. On a perusal of the impugned order it is evident that the petitioner had submitted detailed objections to the proposal notice. Even though the objections were illustrated in the order of assessment in detail, the impugned order does not reflect any consideration of those objections. On the other hand, what is stated by the assessing authority is that, he had gone through the reply and rejected all the contentions since it is devoid of any merits.

3. The learned counsel for the petitioner points out that the opportunity of hearing contemplated u/s 25(1) is not an empty formality and non-compliance of

such procedure will vitiate the order of assessment. He relies on a decision of this court in Suzion Infrastructure Service Ltd. Vs. The Commercial Tax Officer (W.C.), . It is further contended that the assessment is finalised on a total non-consideration of the contentions and without application of mind.

4. On a perusal of the impugned order it is evident that the assessment was finalised unilaterally, without proper consideration of the contentions raised. It is evident that no opportunity of hearing was afforded after receipt of the objections. The Government Pleader appearing for the respondents is not in a position to confront with the above factual situations. Therefore I am of the view that the order of assessment is unsustainable in the eye of law. Accordingly the writ petition is allowed and exhibit P3 is hereby quashed. The first respondent is directed to consider the matter afresh and to finalise the assessment after affording an opportunity of hearing to the petitioner. Needless to say that the petitioner shall be afforded with opportunity to produce documents and books of accounts in support of his contentions. Fresh orders of assessment in this regard shall be issued as early as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.