

(2015) 03 KL CK 0089

In the High Court Of Kerala

Case No : W.A. No. 533 of 2015 in W.P. (C) 5301/2015

Kunhikannan Jewellery

APPELLANT

Vs

The Assistant Commissioner (KVAT)-II

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 25(1), 8(f)(ii), 8(f)(iii), 8f(ii)

Citation : (2015) 03 KL CK 0089

Hon'ble Judges : K. Harilal, J.; T.B. Radhakrishnan, J.

Bench : Division Bench

Advocate : T.M. Sreedharan, Senior Advocate, V.P. Narayanan and Divya Ravindran, for the Appellant; Liju V. Stephen, Sr. Government Pleader, Advocates for the Respondent

Judgement

T.B. Radhakrishnan, J.—We have heard the learned senior counsel for the appellant.

2. Ext. P6 order was issued following Ext. P1 notice under Section 25(1) read with Section 8f(ii) of the Kerala Value Added Tax Act, 2003, "Act", for short. The challenge made in writ jurisdiction was turned down by the learned single Judge holding that the issues raised have to be placed for consideration in statutory appeals. It is also noticed that, insofar as the procedure followed through Ext. P1 is concerned, there was no objection raised as to non-compliance of statutory procedure prior to the cancellation of the order permitting the petitioner to pay tax at compounded rate for the assessment year in question. That notwithstanding, the learned single Judge was of the view that the questions raised cannot be taken up for adjudication in writ jurisdiction. However, it was noted that the substance of Ext. P6 order may have to be carried in appeal to two authorities because it related to two independent issues which have to be agitated in independent and separate jurisdictions. Accordingly, the learned single Judge recorded the following decisions:

"6. The learned senior counsel for the petitioner would point out that, Ext. P6

order is a composite one that both, cancels the permission granted to the petitioner for paying tax at compounded rates in terms of Section 8(f)(ii) and also completes the assessment in accordance with Section 25(1) of the Act. It is pointed out that, as per Section 8(f)(iii) of the KVAT Act, an order under 8(f)(ii) is appealable only to the Appellate Tribunal and the appeal against an order under Section 25(1) would lie before the Deputy Commissioner (Appeals). Taking note of the submissions of the learned senior counsel for the petitioner, I make it clear that, the petitioner will be free to file an appeal against that portion of Ext. P6 order, which cancels the permission granted to the petitioner for payment of tax at compounded rate, in an appeal before the Appellate Tribunal and impugn that portion, which deals with the assessment under Section 25(1) of the Act, in a duly constituted appeal before the first appellate authority under the Act. In the appeal to be filed before the Appellate Tribunal, against the order passed under Section 8(f)(ii), it will be open to the petitioner to raise the contentions with regard to non-compliance of the statutory provisions, prior to the passing of the order cancelling the permission granted for payment of tax at compounded rates. To enable the petitioner to prefer separate appeals as above, against the same order, the first respondent shall furnish two certified copies of Ext. P6 order to the petitioner." 3. In view of the aforesaid, we are not impressed to take the view that the learned single Judge acted contrary to the constitutional scheme in having relegated the appellant-writ petitioner to statutory remedies available under the Act.

4. The learned senior counsel for the appealing writ petitioner referred to the decision of the Honourable Supreme Court of India in *Girdhari Lal Nannelal Vs. The Sales Tax Commissioner, M.P.*, and in *P.C. Ittymathew and Sons Vs. Dy. Commissioner of Sales Tax (Law)*, to buttress the argument that the approach which has to be adopted is not the one that is reflected in Ext. P1. Fundamentally, we are of the view that it is too premature for us to conclude so. We cannot but take this view because Ext. P1, on its face, discloses certain facts and figures, reasoning the process which would have led that authority which issued Ext. P1, to arrive at whatever it has stated in Ext. P1. That position notwithstanding, we cannot but note that the precedents referred to by the appellant's learned senior counsel were rendered by the Honourable Supreme Court of India in cases which were instituted after exhausting statutory remedies, where mixed questions of facts and law in each case had fallen for consideration at the appropriate level in the statutory hierarchy. Therefore, we are unable to act upon those precedents to enter a finding on the basis of the materials or facts and factors emanating out of Exts. P1 and P6 qua any objections raised by the assessee as against Ext. P1.

5. The learned single Judge was fully justified in writ jurisdiction to have relegated the writ petitioner to statutory remedies. We find no ground to entertain this intra-court writ appeal.

In the result, this writ appeal is dismissed. The time granted by the learned

single Judge for institution of the appeals will stand extended by one month from today, as last opportunity.