(2015) 09 KL CK 0065

In the High Court Of Kerala

Case No : W.P.(C) No. 25899 of 2015

Kunnath Pharmaceuticals APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 25

Citation : (2015) 5 KHC 492 : (2015) 4 KLJ 440

Hon'ble Judges : Anil K. Narendran, J.

Bench : Single Bench

Advocate : M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas, K. John Mathai, Joson Manavalan, Kuryan Thomas and Raja Kannan, for the Appellant; Sudheesh Kumar, Senior GP, for the Respondent

Judgement

Anil K. Narendran, J.—The petitioner is a registered dealer under the Kerala Value Added Tax Act, 2003, on the rolls of the 2nd respondent, engaged in the manufacture and sale of ayurvedic products. For the assessment year 2006-07, the 2nd respondent completed assessment under sub- section (1) of Section 25 of the Kerala Value Added Tax Act, 2003 (hereinafter referred to as ''the KVAT Act'') by Ext. P1 assessment order dated 16.6.2014, assessing the balance tax due at 40,23,402/-. Against Ext. P1 assessment order, the petitioner filed Ext. P2 memorandum of appeal dated 8.1.2015 before the 3rd respondent, who is the first appellate authority. Along with Ext. P2 appeal, the petitioner has also filed Ext. P3 stay petition seeking absolute stay of collection of tax and interest assessed in Ext. P1 order. Before the 3rd respondent, relying on Ext. P4 judgment of this Court dated 2.7.2013 in W.A. No. 937 of 2013, the petitioner sought for an absolute stay against collection of the tax and interest assessed in Ext. P1. In Ext. P4 judgment, a Division Bench of this Court observed that, the product of the petitioner, namely. ''Musli Power X''tra'' prima facie falls within the entry relating to ayurvedic drugs and granted unconditional stay for the assessment years 2008-09 and 2009-10, pending appeal before the first appellate authority. On the issue of demand of differential tax (12.5% instead of

4% declared) the petitioner explained to the 3rd respondent the bifurcation of turnover on issues pertaining to ''Musli Power X''tra'' assessed in Ext. P1 order, so as to enable the first appellate authority to cull out the same, for granting an absolute stay, in line with Ext. P4 judgment of this Court. Ext. P5 is a statement of computation of turnover and tax due for the assessment year 2006-07.

2. But, the first appellate authority, without adverting to any of the contentions raised by the petitioner relying on Ext. P4 judgment of this Court, issued Ext. P6 conditional order of stay, on the petitioner remitting 30% of the demand and furnishing adequate security to the satisfaction of the assessing authority for the remaining demand, within a period of three weeks of receipt of the order. It was made clear that, if the conditions stipulated above are not fulfilled, the order of stay will stand vacated automatically. It is aggrieved by the conditions imposed by the first appellate authority in Ext. P6 order, the petitioner is before this Court in this Writ Petition seeking a writ of certiorari to quash Ext. P6 order and seeking a declaration that the petitioner is entitled for an absolute stay in the facts and circumstances of the case and in the light of Ext. P4 judgment of this Court.

3. By order dated 21.8.2015 this Court granted interim stay against recovery for a period of two weeks.

4. The assessing authority has filed a bifurcation statement dated 11.9.2015 and the assessee has also filed a statement showing head-wise computation of turnover and the tax impact for the assessment year 2006-07.

5. Heard arguments of the learned counsel for the petitioner and also the learned Senior Government Pleader appearing for the respondents.

6. The sole issue that arises for consideration in this Writ Petition is as to the legality or otherwise of Ext. P6 order passed by the first appellate authority to the extent of imposing a condition to remit 30% of the demand and furnish adequate security to the satisfaction of the assessing authority for the remaining balance, in order to stay the recovery pursuant to Ext. P1 assessment order the learned counsel for the petitioner would contend that, the petitioner is entitled for an unconditional stay, in view of the finding in Ext. P4 judgment of this Court that the petitioner has demonstrated an exceptionally strong prima facie case to grant such an order of stay. The relevant portion of Ext. P4 judgment reads thus:--

".....The comparative evaluation of the contents of the drug licence and the contents of the brochure would not lead to a conclusion that the appellant had not demonstrated an exceptionally strong prima facie case to grant an order of stay, pending the appeals before the statutory authority. We are of the view that the appellant has shown that its product prima facie falls within the entry relating to Ayurvedic drugs. This expression by us shall not be taken as any guidance while deciding the appeals, and the second respondent will decide on the appeals after hearing the assessee and the department''s representative and on thorough perusal and comparative evaluation of all relevant materials, untrammeled by anything stated herein. The question whether there is any sizable distinction between the descriptions in the brochure and the drug licence etc., are matters that would stand open on all fours at the hearing of the appeal. We are of the view that the appellant is entitled to an order of stay without conditions, though we record the submission of the learned Government Pleader that at least for one among the assessment years there could be some over lapping."

7. A reading of Ext. P6 order would show that, the first appellate authority has not even adverted to Ext. P4 judgment of this Court while, passing the said conditional order of stay. In Ext. P4 judgment this Court held that, a comparative evaluation of the contents of the drug licence and the contents of the brochure would lead to a conclusion that the assessee has demonstrated an exceptionally strong prima facie case to grant an order of stay, pending the appeals before the statutory authority and that, the assessee has shown that its product prima facie falls within the entry relating to Ayurvedic drugs. Therefore, this Court held that, the assessee is entitled to an order of stay without conditions. However, this Court made it clear that, the expression that ''the product prima facie falls within the entry relating to Ayurvedic drugs'' shall not be taken as any guidance while deciding the appeals, and the first appellate authority will decide on the appeals after hearing the assessee and the department''s representative and on thorough perusal and comparative evaluation of all relevant materials, untrammeled by anything stated in the judgment and that, the question whether there is any sizable distinction between the descriptions in the brochure and the drug licence, etc., are matters that would stand open on all fours at the hearing of the appeal. Thereafter, this Court in Ext. P4 judgment concluded that, the assessee is entitled to an order of stay without conditions.

8. The fact that the product covered by Ext. P1 order of assessment and that dealt with in Ext. P4 judgment of this Court is one and the same, namely, ''Musli Power X''tra'' is not in dispute. Ext. P6 conditional order of stay granted by the first appellate authority relates to the assessment year 2006-07, whereas Ext. P4 judgment relates to the assessment years 2008-09 and 2009-10. In Ext. P6 order, the first appellate authority has not even made a prima facie finding that there is any sizable distinction or difference in the composition of the product ''Musli Power X''tra'' during the assessment years 2008-09 and 2009-10 covered by Ext. P4 judgment and the assessment year 2006-07 covered by Ext. P6 conditional order of stay. In such circumstances, there is absolutely no justification on the part of the first appellate authority in passing Ext. P6 conditional order of stay, even without adverting to Ext. P4 judgment of this Court relied on by the assessee.

9. In Union of India and others Vs. Kamlakshi Finance Corporation Ltd., the Apex Court held that, the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. Para. 6 of the judgment reads thus;

"6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual malafides but with the fact that the officers, in reaching in their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."

10. In the case on hand, Ext. P4 judgment of this Court attained finality in the absence of any challenge made by the department. Therefore, the principles of judicial discipline require the 3rd respondent, who is the first appellate authority, to follow Ext. P4 judgment of this Court unreservedly, while considering the entitlement of the assessee for an unconditional stay during the pendency of the appeal relating to another assessment year. As I have already noticed, the first appellate authority has not even made a prima facie finding in Ext. P6 order that, there is any sizable distinction or difference in the composition of the product ''Musli Power X''tra'' during the assessment year 2006-07 covered by the said conditional order of stay and the assessment years 2008-09 and 2009-10 covered by Ext. P4 judgment. Therefore, while granting an order of stay during the pendency of Ext. P2 appeal, the first appellate authority ought not to have imposed a condition of remitting 30% of the demand made in Ext. P1 order of assessment and furnishing adequate security to the satisfaction of the assessing authority for the remaining demand. Instead, the said authority ought to have granted an unconditional stay on the issue pertaining to demand for differential tax. Therefore, the condition imposed by the first appellate authority while granting an order of stay during the pendency of Ext. P2 appeal, vide Ext. P6 cannot be sustained.

11. During the pendency of this writ petition, the assessing authority has filed a bifurcation statement dated 11.9.2015 and the petitioner has also filed Annexure A statement showing head-wise computation of turnover. Going by Annexure A statement showing head-wise computation of turnover, the balance tax due, after excluding the issue regarding differential tax (12.5% instead of 4% declared) for ''Musli Power X''tra'', comes to 4,69,602/-. In such circumstances, I deem it appropriate to direct the petitioner to deposit a sum of 5,00,000/- with the assessing authority, the 2nd respondent, within a period of two weeks from the date of receipt of a certified copy of this judgment, as a condition to stay recovery of the balance amount as per Ext. P1 order of assessment, during the pendency of Ext. P2 appeal pending before the first appellate authority, the 3rd respondent. In case of default, the assessing authority will be free to proceed with recovery of the balance amount as per Ext. P1 order of assessment. It is made clear that, the first appellate authority shall decide the question whether the product ''Musli Power X''tra'' falls within the entry relating to ''Ayurvedic drugs'', after hearing the assessee and the department''s representative and on thorough perusal and comparative evaluation of all relevant materials, untrammeled by anything stated in this judgment. Similarly, the question whether there is any sizable distinction or difference between the composition of the product in question during the assessment year in question, namely, 2006-07 and the assessment years 2008-09 and 2009-10 covered by Ext. P4 judgment; or whether there is any sizable distinction or difference between the descriptions of the said product in the brochure and the drug licence, etc., are matters that would be dealt with by the first appellate authority untrammeled by anything stated in this judgment. The first appellate authority shall consider Ext. P2 appeal on merits and dispose of the same, as expeditiously as possible, at any rate within a period of four months from the date of receipt of a certified copy of this judgment. In the result, this writ petition is disposed of modifying Ext. P6 conditional order of stay, to the extent indicated above. No order as to costs.