(2012) 03 KL CK 0273

In the High Court Of Kerala

Case No : W. P. (C) No. 36712 of 2009 (H)

Kuruvithadam Agencies Private Limited — APPELLANT

Vs

Assistant Commissioner, Commercial Taxes Special Circle, Perumbavoor, Ernakulam and Others — RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 67

Citation : (2012) 50 VST 357

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Vijayan. K. U. and K. N. Sreekumaran, for the Appellant; Sobha Annamma Eappen, Government Pleader, for the Respondent

Judgement

Antony Dominic, J.—The petitioner is an assessee under the Kerala Value Added Tax Act. For the assessment year 2007-08, they were issued exhibit P1 notice. To that notice the petitioner filed exhibit P2 objection. After receipt of exhibit P2 objection they were issued exhibit P3 revised notice to which also the petitioner filed exhibit P4 reply. Subsequently the first respondent completed the assessment and also levied penalty on the petitioner as per exhibit P5 order. This order was challenged before this court in WP(C) No. 22153 of 2009, in which violation of principles of natural justice was complained of. The writ petition was heard and disposed of by exhibit P6 judgment quashing exhibit P5 and directing the first respondent to finalize the proceedings afresh after issuing notice to the petitioner and hearing therein.

2. In pursuance to the direction in exhibit P6 judgment, exhibit P7 notice was issued to the petitioner. This notice was served on the petitioner on October 22, 2009. Accordingly the petitioner field exhibit P8 objection dated October 27, 2009 which was delivered at the office of the first respondent on October 30, 2009. Exhibit P8(a) is the acknowledgment. Thereafter without issuing any notice or hearing the petitioner, exhibit P9 assessment order was passed on November

7, 2009 and was served on the petitioner on November 16, 2009.

3. Based on the findings in exhibit P9 assessment order, exhibit P11 notice u/s 67 of the KVAT Act proposing to levy penalty on the petitioner was also issued. It is in this background, this writ petition has been filed praying to quash exhibits P9 and P11.

4. The contention raised by the counsel for the petitioner is that though exhibit P8 objection was filed by the petitioner on October 30, 2009, as is evidenced by exhibit P8(a), exhibit P9 assessment order was passed on the basis that the petitioner did not file any objection in response to exhibit P7. This according to the counsel is illegal and therefore exhibit P9 is liable to be set aside.

5. The learned Government Pleader however contends that as per exhibit P7 notice, objections were to be filed within seven days and the petitioner was also required to appear for hearing on any working day within the seven days period. According to her, despite such an opportunity given, the petitioner did not appear for hearing and therefore the petitioner cannot complain of denial of opportunity of hearing in the matter.

6. Having heard the rival submissions made at the Bar I am inclined to think that the matter needs to be reconsidered. Exhibit P7 notice was served on the petitioner on October 22, 2009 and the petitioner was given seven days time for filing his objection. On receipt of exhibit P7 the petitioner filed exhibit P8 objection which has been acknowledged by the first respondent''s office on October 30, 2009. Therefore as on November 7, 2009 when exhibit P9 order was issued, exhibit P8 objection filed by the petitioner was already received at the office of the first respondent. It is despite this factual position that in exhibit P9 it is stated as follows :

The said notice was served on the assessee on October 22, 2009 and dealer has not filed objections to the notice till date. In this circumstance it is presumed that the dealer has no valid grounds to offer in this regard and the escaped assessments were completed as proposed."

7. It has been held by this court that assessment will be completed only if the assessment order is served on the assessee and any objection filed by the assessee disputing the assessment order should also be considered before completing the final assessment. If that principle is applied to the facts of this case, it can be seen that as on November 7, 2009 when exhibit P11 order was passed the first respondent should have taken into account the contentions raised in exhibit P8. Admittedly this was not done and for that reason exhibit P9 is vitiated. Therefore I set aside exhibit P9 and direct that the first respondent shall issue notice to the petitioner, hear them and pass fresh orders in the matter duly adverting to exhibit P8 objection filed by the petitioner also.

8. Exhibit P11 penalty notice is a consequence of exhibit P9. Now that I have set aside exhibit P9, exhibit P11 notice also has to be set aside.

9. Therefore this writ petition is disposed of directing that the first respondent shall reconsider the matter in the manner as directed above. It is made clear that in the event of passing fresh assessment order, it is for the first respondent to consider whether notice is to be issued u/s 67 of the KVAT Act. The writ petition is disposed of as above.

