(2023) 12 KL CK 0232

In the High Court Of Kerala

Case No : Writ Appeal No.2137 Of 2023

Menacherry Lonappan Jayan	APPELLANT
Vs	
State Tax Officer	RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Citation : (2023) 12 KL CK 0232

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Dr. Kauser Edappagath, J

Bench : Division Bench

Advocate : Harisankar V. Menon, K.Krishna, Meera V.Menon, Parvathy Menon, R.Sreejith, P.R.Sreejith, V.P.Shamsudheen

Final Decision : Allowed

Judgement

Dr. Kauser Edappagath, J.

1. The appellant filed the writ petition before the learned Single Judge impugning Ext.P5 order passed by the 1st respondent, State Tax Officer. The learned Single Judge dismissed the writ petition relegating the appellant to alternative appellate remedy. It is challenging the said judgment; the appellant is before us.

2. We have heard Sri.Harisankar V.Menon, the learned counsel for the appellant, Sri.P.R.Sreejith, the learned standing counsel for respondents 1 and 2 and Sri.V.K.Shamsudheen, the learned Senior Government Pleader.

3. The appellant, an assessee under the GST Act on the rolls of the 1st respondent, had filed returns and paid tax thereon for the assessment year 2017-18. By Ext.P1, the 1st respondent proposed to demand tax along with interest on the alleged non payment of tax due of ☐ 77,204.88/- as in the GSTR-1 return and claim of excess input tax credit of ☐ 4,23,463/-. The appellant gave reply to Ext.P1. Thereafter, the 1st respondent issued Ext.P5 show cause notice demanding tax and interest under Section 73. The appellant uploaded Ext.P3 reply in Form GST DRC-06 along with necessary attachments through the registered web portal of GST Department. The appellant specifically requested

for an opportunity of personal hearing. However, it appears that the 1st respondent issued Ext.P5 order finalising the demand without referring to Ext.P3 reply or granting the appellant an opportunity for personal hearing. Thus, the impugned order clearly violates the principles of natural justice. Hence, we are of the view that Ext.P5 cannot be sustained and it is liable to be set aside.

Accordingly, we allow the appeal setting aside the impugned judgment as well as Ext.P5. The 1st respondent is directed to pass fresh order after taking into account the contentions raised by the appellant in Ext.P3 reply and after giving him an opportunity of personal hearing.