(2017) 01 KL CK 0049

In the High Court Of Kerala

Case No : W.P.(C) No. 236 of 2017 (D)

M/s. Modern Electricals	APPELLANT
Vs	
The Assistant Commissioner	RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 25(1)

Citation : (2017) 1 KLT 570

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Sri. K.J. Abraham and Sri. Nikhil John, Advocates, for the Petitioner; Sri. V.K. Shamsudheen, Government Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

Mr. K. Vinod Chandran, J.—The petitioner is aggrieved with Ext.P5 order passed under Section 25(1) read with Section 25A of the Kerala Value Added Tax Act, 2003 (''KVAT Act'' for short). The Assessment Year is 2009-2010 and the notice under Section 25(1) of the KVAT Act was dated 24.01.2014, within the limitation period, as provided under the provision. A reply was filed by the dealer and, again, a notice dated 09.09.2016 was issued under Section 25A of the KVAT Act.

2. The contention raised is of limitation and that there is no objection of the Comptroller and Auditor General and that the objection, if at all, of the Accountant General would not be an objection as contemplated in Section 25A; of the Comptroller and Auditor General.

3. The extract of the official web site of the Accountant General (Kerala) is produced before me from which the following paragraphs are extracted:

"The Offices of the Accountants General are part of the Indian Audit & Accounts Department under the Comptroller and Auditor General of India (C&AG). The C&AG is a constitutional authority appointed by the President of India. The functions of the C&AG are derived mainly from the provisions of Articles 149 to 151 of the Constitution of India. The C&AG''s Duties, Powers and Conditions of Service (DPC) Act, 1971 was passed by Parliament in 1971 under Articles 148(3) and 149 of the Constitution.

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Travancore-Cochin became a Part-B State on 26th January, 1950 and with the federal financial integration that took place in April, 1950, audit and accounting functions became the responsibility of the Comptroller & Auditor General of India. The designation of the office was changed to Comptroller, Travancore and Cochin and the then State Accountant General Shri. Govinda Menon became the Comptroller.

With the reorganisation of States in November, 1956, the new State of Kerala was born, comprising of the erstwhile State of Travancore-Cochin, Malabar District and Kasaragod Taluk. The Office was upgraded to Accountant General''s level in 1960 and Shri.S.Vasudevan, the last Comptroller of the Travancore-Cochin State was appointed as the first Accountant General of Kerala."

This is more so evident since there would not be any occasion where the Comptroller and Auditor General conducts an audit within the State and the same is only conducted through the Office of the Accountant General.

4. The ground of limitation cannot be sustained since, the notice under Section 25(1) of the KVAT Act is dated 24.01.2014 and the same has been validly initiated within the limitation provided under the provision. The further contention raised is of the objection of the Comptroller and Auditor General or the Accountant General, having not been supplied to the petitioner. This Court finds that though the statute is silent as to the furnishing of the objections to the assessee, that alone cannot lead to an exclusion of the requirement; to put a person to notice of the objection raised in audit, which could also lead to revision of assessment, already completed under the Act.

5. Mohinder Singh Gill v. Chief Election Commissioner - (1978) 1 SCC 405 held so:

"77. We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the Rules and inferentially where it has not specificated it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation."

6. Putting an assessee to notice of, what has led to the reopening of an already completed assessment, and the grounds that could be taken to revise the assessment, to the detriment of the assessee, enhancing the liability to tax, is a functional obligation which the statutory authority has to comply with even if the statute does not provide for it. The statute though silent, there can be no

exclusion inferred from the said salutary principle.

7. The petitioner has a contention that the objections, as noticed under Section 25(1) of the KVAT Act has been finalised and a verification of the check note in the files would reveal that the earlier officer had closed the proceedings. However, the learned Government Pleader, on a verification of the files, submits that there is no such check note available. The said contention, hence, cannot be sustained.

8. In such circumstance, Ext.P5 is set aside only for reason of the objections raised in audit by the Accountant General having not been supplied to the assessee. The relevant objections shall be informed to the petitioner by a notice, containing also the proposals as contemplated by the assessing officer; within a period of two weeks from today and the petitioner shall also be allowed to file his objections. The petitioner shall also be given a hearing and final order shall be passed within a period of one month from the date of hearing. In this context the final decision as to whether the assessment is to be revised or not is on the assessing officer, the authority conferred with the power so to do under the KVAT Act. The objection on audit can, at best, be a word of caution and cannot be deemed to a dictate.

9. It is made clear that the setting aside of Ext.P5 is only to the extend of the objections raised on audit and revision attempted under Section 25A. Whatever proposals notified under Section 25(1) of the KVAT Act, and finalised by the assessment order shall not be upset by this judgment and the petitioner shall be entitled to file an appeal from the said order.

10. The Writ Petition is partly allowed. No Costs.

