(2023) 08 KL CK 0226

In the High Court Of Kerala

Case No : Writ Appeal No.1478 Of 2023

M/s Nirapara Roller Flour Mills [P] Ltd — APPELLANT

Vs

State Tax Offcier — RESPONDENT

Date of Decision : 23-08-2023

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 67(1)

Citation : (2023) 08 KL CK 0226

Hon'ble Judges : Dr. A.K. Jayasankaran Nambiar, J;Mohammed Nias C.P.J

Bench : Single Bench

Advocate : Aji V.Dev, Alan Priyadarshi Dev, S.Sajeevan, M.M Jasmine

Final Decision : Dismissed

Judgement

Dr. A.K.Jayasankaran Nambiar.J

1. This writ appeal is preferred against the judgment dated 1.8.2023 of a learned single Judge in WP(C)No.11369 of 2019.

2. The brief facts necessary for disposal of the writ appeal are as follows:-

The appellant herein approached this Court through the writ petition impugning an order of penalty passed under Section 67(1) of the Kerala Value Added Tax Act (KVAT Act). It would appear that against an earlier order of penalty that was passed against the appellant, an appeal was filed before the first appellate authority and the said authority remanded the matter back to the intelligence officer for a fresh disposal in accordance with law, after affording a reasonable opportunity to the appellant. In the de novo proceedings a fresh order confirming the penalty against the appellant came to be passed. The appellant thereafter approached this Court against the said order of the intelligence officer on the contention that while passing the impugned order the intelligence officer had not followed the directions issued by the appellate authority who had remanded the matter on the earlier occasion. He also raised a contention regarding violation of the principles of natural justice as, according to him, the documents seized from his premises had not been returned to him.

3. The learned single Judge, who considered the matter found no substance in the argument of the learned counsel for the appellant that there had been a violation of the principles of natural justice since he had been issued a due notice asking him to prefer objections to the proposal for imposition of penalty and the order imposing penalty was passed only after considering those objections. The learned single Judge further found that in as much as there was an effective alternate remedy of preferring an appeal against the penalty order, there was no justification in entertaining the writ petition against the same. The learned single Judge then proceeded to grant the appellant 15 days time to avail the alternate remedy and issued a further direction to the first appellate authority to consider that appeal expeditiously on merits without going into the question of limitation.

4. Before us, it is the submission of the learned counsel for the appellant that the learned single Judge ought to have entertained the writ petition on merits and ought not to have relegated the appellant to the first appellate authority.

5. On a perusal of the impugned judgment of the learned single Judge, we find that the learned single Judge has considered the matter in its correct legal perspective and there was indeed no exceptional circumstances warranting an intervention by this Court with the penalty order.

Resultantly, we dismiss this writ appeal without prejudice to the right of the appellant to prefer an appeal against the order impugned in the writ petition within a period of one month from the date of receipt of a copy of this judgment, by extending the time granted by the learned single Judge to that extent. Save for this limited modification, the writ appeal is otherwise dismissed.

