(2021) 04 KL CK 0055

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8904 Of 2021

M/S. Sandrose Global Merchandise (P) Ltd	APPELLANT
Vs	
Deputy/Assistant Commissioner (Assessment) And Ors	RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Citation : (2021) 04 KL CK 0055

Hon'ble Judges : A.M. Badar, J

Bench : Single Bench

Advocate : Harisankar V. Menon, Meera V. Menon, Thushara James

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner so also the learned Government Pleader appearing for respondents.

2. The petitioner is an assessee under the Kerala Value Added Tax Act, 2003 (KVAT Act, for short) as well as Central Sales Tax Act, 1956 (CST Act, for short). The assessment orders for the years 2006-2007 as well as 2007-2008 under the KVAT Act passed by the assessing officer were questioned by the petitioner by filing appeals before the Tribunal. By the judgment and order at Ext.P2 dated 22.10.2019, the learned Kerala Value Added Tax/Agricultural Income Tax & Sales Tax Appellate Tribunal was pleased to quash the assessment orders for the years 2006-07 and 2007-08. Similarly, the assessment orders for the years 2013-14 and 2016-17 under the KVAT Act passed by the assessing officer came to be challenged by the petitioner before the concerned Tribunal and by the judgment and order dated 14.10.2019, the learned Tribunal was pleased to quash and set aside the assessment orders for those years. By virtue of quashment of the assessment orders by the learned Tribunal vide its judgments at Exts.P2, P3 and P4, the petitioner claims that the petitioner is entitled for refund of the amount of tax of Rs.36,66,960/- paid in excess by them for the years 2006-07, 2007-08, 2013-14 and 2016-17.

3. The petitioner had claimed the benefit of payment of arrears under the Amnesty Scheme 2020 by preferring applications. So far as assessment orders for the years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 are concerned, by orders at Exts.P5 and P5(a) (page Nos.45 and 46 of the paper book), the petitioner was informed that the applications for claiming the benefit of Amnesty Scheme 2020 are allowed. The petitioner was accordingly directed to pay an amount of Rs.9,97,311/- if paid in lumpsum or that of Rs.12,46,638/- if paid in instalments by intimation at Ext.P5, whereas by intimation at Ext.P5(a), the petitioner was informed to pay Rs.8,98,362/- if paid in lumpsum or that of Rs.11,22,952/- if paid in instalments. The petitioner claims that the petitioner has already paid excess amount of tax to the tune of Rs.36,66,960/- though the petitioner was not liable for the same in pursuant to the judgment and order of the learned Tribunal at Exts.P2, P3 and P4 and therefore, the respondents ought to have adjusted this excess amount paid by the petitioner while ordering them to pay the amount as per the Amnesty Scheme 2020 vide Exts.P5 and P5(a). Accordingly, the petitioner has submitted a representation at Ext.P6 before the 1st respondent.

4. Learned counsel for the petitioner submits that in the light of the judgments of this Court in Steel Exchange India Ltd vs. Asst.Commissioner, Special Circle I & Ors reported in (2020) 28 KTR 397 (Ker.) and in Gandhi Sons vs. Assistant Commissioner, Special Circle (Produce), Mattancherry and another reported in (1994)95 STC 205 (Ker), the respondents ought to have adjusted the amount which was liable to be refunded to the petitioner towards the amount found payable under the Amnesty Scheme.

5. Learned Government Pleader appearing for the respondents opposed the writ petition by contending that the amount payable under the Amnesty Scheme has nothing to do with the amount if any which may be liable to be refunded to the petitioner.

6. I have considered the submissions so advanced. The issue involved in the instant writ petition regarding adjustment of amount which is due and payable to the petitioner as assessee towards their liability under the amount payable as per the Amnesty Scheme is no more res integra. In the matter of Steel Exchange India Ltd (supra), in paragraph 3, this Court has held thus:

"On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, although it is the specific case of the learned Government Pleader that, under the Amnesty Scheme, there is no provision for an adjustment of refund amounts towards amounts found payable by an applicant seeking the benefit of Amnesty Scheme, the adjustment in question does not in any manner offend the Amnesty Scheme or do violence to its language. As already noted, it is not in dispute that the petitioner has been found entitled to various amounts by way of refund by Ext.P2 series of orders. The department has not preferred any appeal against the said order so as to cast any doubt on the entitlement of the petitioner for the refund amount. In that scenario, when amounts are liable to be paid by the petitioner to the department for the purposes of getting the benefit of the Amnesty Scheme, an adjustment of the refund amounts due to the petitioner towards whatever amount is found payable by the petitioner, would not in any manner offend the terms of the Scheme because it is simply an adjustment towards the payment to be made under the Scheme. I, therefore, allow the Writ Petition by directing the respondents to appropriate the amounts determined as payable by the petitioner under the Amnesty Scheme, from the amounts due to the petitioner by way of refund pursuant to Ext.P2 series of orders, and thereafter, release the balance amount of refund to the petitioner, expeditiously".

7. Similarly, in the matter of Gandhi Sons (supra), this Court has relied on the judgment of the Hon'ble Supreme Court in the matter of N.C Mukherjee and Co. vs. Union of India reported in (1967) 1 SCWR 246 and held that the procedure to be followed in cases where there are amounts due to, and from the State is that the assessing authority must adjust the amount due to the assessee and recover only the balance if any.

8. In this view of the matter, non adjustment of the amount due and payable to the petitioner being assessee for the assessment years 2006-07, 2007-08, 2013-14 and 2016-17 towards their liability under the Amnesty Scheme 2020 cannot be justified. Therefore, the writ petition is disposed of with the following directions:

The respondents to consider the representation at Ext.P6 made by the petitioner regarding adjustment of amount payable to them within a period of two months from the date of this judgment in the light of ratio of judgments of this Court in the matter of Steel Exchange India Ltd (supra) and in Gandhi Sons (supra).