(2013) 03 KL CK 0084

In the High Court Of Kerala

Case No : WP (C) No. 6437 of 2013 (D)

M/s. Shell India Markets Private Ltd.	APPELLANT
Vs	
The Asst. Commissioner, The Deputy Commissioner (Appeals) and The Inspecting Asst. Commissioner, Department of Commercial Taxes	RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Citation : (2013) 03 KL CK 0084

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : S.K. Devi and Sri. Santhosh P. Abraham, for the Appellant; Shoba Annamma Eapen Senior Government Pleader, for the Respondent

Judgement

Antony Dominic, J.—Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents. Petitioner is an assessee under the KVAT Act. Assessment under the said Act was completed against the petitioner for the year 2010-11. The assessment order was challenged by the petitioner in an appeal filed before the second respondent. In the stay petition filed along with the appeal, the appellate authority passed Ext. P4 order granting stay on condition that the petitioner remits 1/3rd of the tax due and furnishes security for the balance. This order is dated 13.2.2013 and the petitioner says that they have time till 15.3.2013 for its compliance. According to the petitioner, to comply with Ext. P4, they will have to deposit an amount of Rs. 26,29,500/-. It is stated that under Exts. P6 and P7 orders, Rs. 21,06,335/- is liable to be refunded to the petitioner. Therefore, they submitted Ext. P8 application requesting that the amounts due under Exts. P6 and P7 be adjusted towards the 1/3rd liability under Ext. P4 and they be permitted to pay the balance. That request of the petitioner was rejected by Ext. P9 order stating that Exts. P6 and P7 relate to another company and therefore, the petitioner cannot take advantage of those orders. It is thereupon, this writ petition has been filed.

2. While it is true that Exts. P6 and P7 are issued in the name of M/s. Bharat Shells Ltd., it is seen that the said company was amalgamated in the petitioner pursuant to Ext. P5 judgment passed by the Bombay High Court in C.P. No. 673/08. By that judgment, a scheme of amalgamation was sanctioned by the Bombay High Court and the scheme entitles the petitioner, the transferee company, to the amount due under Exts. P6 and P7. If that be so, the reason stated in Ext. P9 is untenable and for that reason, this order cannot be upheld. Therefore, I dispose of this writ petition quashing Ext. P9 and directing that the amounts due under Exts. P6 and P7 shall be appropriated to the liability of the petitioner under Ext. P4 and the balance amount due will be permitted to be remitted by it together with the security to be furnished. This the petitioner shall do on or before 25.3.2013.

Writ petition is disposed of as above. The petitioner will produce a copy of this judgment before respondents 1 and 2 for compliance.