(2023) 08 KL CK 0261

In the High Court Of Kerala

Case No : Writ Appeal No. 1500 Of 2023

M/s Sona Bus Body Works — APPELLANT

Vs

Intelligence Officer — RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala General Sales Tax Act, 1963 — Section 17D, 17D(5)

Citation : (2023) 08 KL CK 0261

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

Bench : Division Bench

Advocate : K.J.Abraham, Nikhil John, Akhil Shaji, M M Jasmine

Final Decision : Disposed Of

Judgement

Dr.A.K.Jayasankaran Nambiar, J

1. This writ appeal is preferred by the petitioner in W.P(C) No.26303 of 2023 aggrieved by the judgment dated 11.8.2023 of the learned single Judge. Briefly stated, the case of the appellant is that he had approached this Court, through the writ petition aforementioned, seeking to quash Exts.P11 and P12 orders passed by the respondents under the Kerala General Sales Tax Act, 1963, (in short 'the KGST Act') for the assessment years 2000-2001 and 2003-2004, respectively. The assessment orders were passed under Section 17D of the KGST Act, which deals with Fast Track Assessment Procedure, and as per the provisions of the Act, there is an alternate remedy available to the appellant if he remits the tax amount demanded along with the appeals that are to be preferred before the Appellate Tribunal in terms of Section 17D(5) of the KGST Act. Although the appellant had raised various contentions on the merits of the assessments completed against him, the learned single Judge who considered the matter noticed the provisions of Section 17D(5) of the KGST Act and thought it appropriate to relegate the appellant to the alternate remedy of preferring an appeal before the Sales Tax Appellate Tribunal. The learned Judge accordingly

found that the appellant’s was not a case which required any intervention by this Court in exercise of the powers under Article 226 of the Constitution of India and relegated the appellant to the alternate remedy aforementioned, taking note of the fact that the time limit of 45 days for preferring appeals had not yet expired.

2. Before us, although it is the vehement contention of the appellant that the assessment orders impugned in the writ petition are vitiated on account of non-compliance with the rules of natural justice and are also arbitrary in that the Fast Track Assessment Team had not considered all the relevant aspects while completing the assessments against the appellant, we are of the view that there are no exceptional circumstances warranting an interference with those assessment orders in these proceedings under Article 226 of the Constitution of India. To that extent, we find the judgment of the learned single Judge to be legally unassailable. We also find that the statutory period of limitation for preferring the appeals in terms of Section 17D(5) has not expired and if the period spent before this Court in pursuing the writ petition and the writ appeal is excluded, the appellant will still have some time for approaching the Tribunal with an appeal against Exts.P11 and P12 assessment orders. If the appellant does not pursue the appellate remedy within the time permitted under the statute, he may well lose out on his legal remedies.

3. We, therefore, dismiss this writ appeal without prejudice to the right of the appellant to prefer an appeal before the Kerala General Sales Tax Appellate Tribunal against Exts.P11 and P12 assessment orders impugned in the writ petition. We make it clear that if the appellant files the appeals before the Appellate Tribunal within two weeks from today by paying the tax amounts confirmed against the appellant, without the interest thereon, along with the appeals, the Appellate Tribunal shall number those appeals and proceed to decide the same on merits, after hearing the appellant, within a further period of three months from the date of receipt of the appeals aforementioned.

The writ appeal is disposed as above.