(2013) 01 KL CK 0021

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30886 of 2012 (I)

M/s. Whirlpool of India Ltd. APPELLANT

Vs

The State of Kerala RESPONDENT

Date of Decision : 01-01-2013

Acts Referred:

Citation : (2013) 01 KL CK 0021

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : K. Latha, for the Appellant; S. Sudheesh Kumar, Sr. Government Pleader, for the Respondent

Judgement

Antony Dominic, J.—Ext. P1 is an order passed by the appellate authority granting stay on condition that the petitioner remits 40% of the tax due and furnish adequate security for the balance in any forms stipulated under the KVAT Act and Rules before the assessing authority. It was also ordered that this shall be complied within two weeks from the date of receipt of the order. The period for compliance was extended by Ext. P2 order dated 10/12/12. Petitioner says that in compliance with Exts. P1 and P2, he furnished Ext. P3 demand draft and Ext. P4 bond in Form No. 6A. By Ext. P6, the bond was rejected by the assessing officer since it is not accompanied by sureties and solvency certificate of sureties prescribed under the Rules. It is challenging Ext. P6, the writ petition is filed. The contention raised by the learned counsel for the petitioner is that Ext. P4 bond furnished by the petitioner satisfies the requirements of Rule 85 of the KVAT Rules. Rule 85 of the KVAT Rules reads thus;

85. Furnishing of Security:-(1) Where it is provided in the Act that an appellant (or an applicant in revision proceedings) shall furnish security in regard to the payment of tax or fee or other amount, the appellant (or applicant) or any person on his behalf shall furnish security in any of the ways specified in sub-rule (2) of rule 19 or furnish personal property as security as the authority, before which the appeal or application is preferred, may, in its discretion, direct. The

security bond shall be in Form No. 6A, with suitable modification wherever necessary.

(2) Where the order of the appellate or revisional authority does not specify the form in which and the authority before which the security is to be furnished, the security shall be furnished before the authority passing the original order under appeal or revision, in such form as such authority may direct.

(e) Where the security is furnished in the form of a security bond, the sureties furnished shall be solvent for the amount of security furnished.

2. A reading of this rule shows that the rule makes reference to Rule 19(2), which specifies the different ways in which security may be furnished by a dealer. In so far as this case is concerned, what is of relevance are Rule 19(2)(d) and (e), which reads thus;

19(2)(d) executing a security bond for such amount in Form No. 6 with two sureties, solvent enough for the amount assured and acceptable to the said authority; or

(e) by a bond prescribed under rule 85 for the amount fixed by the said authority in Form No. 6A, duly registered, along with title, possession and valuation certificates obtained from the Tahsildar concerned and the value of property shall not be lower than the amount, shown in the bond.

A reading of the aforesaid provisions show that the bond furnished by the petitioner does not satisfy the requirements of the Rules and therefore, I am unable to interfere with Ext. P6. However, the contention of the petitioner is that since Rule 85(1) permits suitable modification, it was permissible for the petitioner to have furnished Ext. P4 and therefore the assessing officer had the obligation to accept the same. In my view, if the petitioner has such a case, it is for the appellate authority to clarify the matter in the manner as canvassed by the petitioner. For that purpose, the petitioner should have moved the appellate authority itself.

Therefore, I dispose of this writ petition giving liberty to the petitioner to move the appellate authority, if they are so advised.