(1962) 02 KL CK 0031

In the High Court Of Kerala

Case No : O.P. No. 1408 of 1960

Namadeva Shenoy — APPELLANT

Vs

Sales Tax Officer, Special Circle — RESPONDENT

Date of Decision : 28-02-1962

Acts Referred:

Citation : (1962) 1 KLJ 458 : (1963) 14 STC 159

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.A. Vaidialingam, J.—I am not satisfied, notwithstanding the attempt made by the learned Government Pleader to support the order under attack, that there has been a real opportunity given to the petitioner to place his objections to the pre-assessment notice. Even the pre-assessment notice that has been furnished to the petitioner, viz., exhibit P-I, except attempting to comply with an empty formality, as such/does not at all give any indication as to what basis the assessing authority proposes to adopt.

2. No doubt, in the pre-assessment notice, exhibit P-I dated 23rd July, 1960, there are certain defects pointed out, which, according to the officer, exist in the books of account that have been produced. After mentioning some of these aspects, ultimately the assessing authority states that the accounts have been rejected in the previous years, and it is, therefore, proposed to reject the book results and estimate the turnover to the best of his judgment.

3. But, having mentioned it, there is absolutely no further indication in the notice exhibit P-I as to what is the basis on which he proposes to make an estimate according to the best of his judgment. The notice finally winds up by calling upon the petitioner to file his objections, if any, and prove the case with necessary

evidence before the officer on 30th July, 1960.

4. So far as this is concerned, the petitioner has categorically stated that this notice, which gives him time to furnish his explanation till 30th July, 1960, was admittedly received by him only on 1st August, 1960, and that fact has also been admitted by the respondent.

5. But, according to the respondent, the petitioner appeared before the assessing authority on 4th August, 1960, and gave a statement, exhibit R. Therefore, the learned Government Pleader urged that apart from what is stated in exhibit R to the proposal made by the officer for making an assessment on the best of judgment basis, the petitioner does not appear to have any grievance.

6. So far as the circumstances under which the statement exhibit R was given, there is keen controversy raised by the petitioner also. According to the petitioner, after receiving the notice exhibit P-I long after the date mentioned therein, he appeared before the assessing authority ; and as the latter officer was not present in station, the statement exhibit R was prepared at the instance of the Sales Tax Inspector and was furnished to the officer.

7. So far as this is concerned, the learned Government Pleader has again drawn my attention to the endorsement on the application to the effect that the assessing authority has made a note that the petitioner was asked as to whether fresh notice is to be served on him, and the petitioner said that it is not necessary to issue him a fresh pre- assessment notice and that the assessment as against him may be made.

8. This controversy clearly shows that the petitioner must be given an opportunity again to place his objections to a proper notice that may be issued by the assessing authority, in the light of the directions contained herein.

9. Mr. V. Rama Shenoi, learned counsel for the petitioner urged that the pre-assessment notice exhibit P-I does not at all give any indication of the basis or the method or the data on the basis of which the officer proposes to make the assessment on best judgment basis.

10. In this connection, the learned counsel referred me to the assessment order exhibit P-2, wherein the assessing authority has stated that the prices of commodities, when compared to 1958-59, have increased in 1959-60, and the value of the business itself has also increased. Naturally the learned counsel severely attacked the reasoning of the officer that the turnover can very fairly be estimated 10 to 12 times the average stock handled.

11. These aspects, according to the learned counsel, have not at all been indicated in exhibit P-I, and therefore, the pre-assessment notice exhibit P-1 does not serve any purpose whatsoever so far as the petitioner is concerned. There seems to be considerable force in this criticism levelled against the pre-assessment notice exhibit P-1. Except referring to some aspects, the notice as such does not indicate, as I pointed out earlier, the basis which the officer

proposes to adopt for making the assessment on a best judgment basis.

12. On this ground, and without going into the other controversy regarding the circumstances under which the statement exhibit R was given, in my view, the petitioner must be given a further opportunity of adducing the necessary materials before the officer in support of his return.

13. The order of assessment under attack is, therefore, set aside, the assessing authority will take up the question of making the assessment for the period in question afresh, and the petitioner will be given fair and full opportunity to place all his points of view regarding the return that he has filed. It is needless to state that when the officer proceeds to make a best judgment assessment, there is a duty on his part to make available to the petitioner every point or aspect that he proposes to take into account in making the best judgment assessment, and give the assessee opportunity to place all the objections that may be available to him both under law and on facts, regarding the proposal. After completing all these formalities, it is open to the assessing authority to make the final assessment.

14. Subject to these observations, the writ petition is allowed, and the order of assessment under attack is set aside. There will be no order as to costs.