(2010) 10 KL CK 0001

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28812 of 2010- (B)

P.C. Rinzo — APPELLANT

Vs

Intelligence Officer, Squad III and Others — RESPONDENT

Date of Decision : 12-10-2010

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 44(8)

Citation : (2011) 42 VST 271

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : P.N. Damodaran Namboothiri, for the Appellant; C.K. Govindan, Senior Government Pleader, for the Respondent

Judgement

C.K. Abdul Rehim, J.—Challenge in this writ petition is against exhibit P10 interim order passed by the Kerala Value Added Tax Appellate Tribunal, Ernakulam. Against the order imposing penalty u/s 44(8) of the Kerala Value Added Tax Act (the KVAT Act), which was confirmed by the first appellate authority, the petitioner had approached the Tribunal by filing exhibit P7 second appeal. Exhibit P8 is the stay petition filed along with the appeal. The stay petition was posted for hearing before the Tribunal. Representative of the petitioner appeared and argued the matter on August 18, 2010. Argument note as per exhibit P9 was submitted before the Tribunal. The Tribunal had issued exhibit P10 order granting conditional stay insisting on the petitioner to make payment of a sum of Rs. 75,000 out of the total amount of Rs. 1,71,000 imposed as penalty. According to the petitioner exhibit P10 order is issued in a highly cryptic manner without proper application of mind and without advertence to the grounds raised in the appeal. On a perusal of exhibit P10, it is noticed that the order will not reflect consideration of any of the grounds raised in the appeal. The Tribunal had only observed that they have pursued the affidavit filed in support of the application and the records which were made available. It is observed that, having regard to the circumstances projected, it is proper to grant conditional stay on payment of a sum of Rs. 75,000.

2. It is settled law by this time that the statutory appellate authorities are bound to pass speaking orders reflecting application of mind to the facts and circumstances of the case and also reflecting proper advertence to the grounds raised in appeal. The authority should appreciate sustainability of the grounds on a prima facie basis and should arrive at a conclusion as to whether it is fit case for granting stay, with or without imposing any condition. Such considerations are not reflected in the order impugned. Therefore I am of the view that exhibit P10 order is not sustainable in the eye of law.

3. However, learned counsel for the petitioner submitted that the appeal itself was posted for hearing before the Tribunal on October 8, 2010 and on that date an adjournment was sought on behalf of the Revenue and the matter now stands posted on November 29, 2010.

4. Under the above circumstances, I am not proposing to remit back the matter for passing fresh orders on the stay petition. On the other hand the interest of justice will be served by directing the Appellate Tribunal to have an early disposal of the appeal and till such time to grant an interim stay imposing a condition which is not onerous in nature.

5. In the result, the writ petition is disposed of directing the second respondent to consider and pass orders on exhibit P7 appeal after conducting a hearing of the same, if possible on November 29, 2010 itself or on any other near date to which the hearing will be adjourned. The appeal may be disposed of at any rate within a period of three months from the date of receipt of a copy of this judgment. Till such time orders are passed on exhibit P7 appeal, realisation of the amount of penalty shall be kept in abeyance on condition of the petitioner remitting 1/4th of the amount in dispute and also furnishing security for the balance amount, within a period of three weeks from today.

