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(2013) 03 KL CK 0163

In the High Court Of Kerala

Case No : W.A. No. 314 of 2013

Rahmat Beevi — APPELLANT

Vs

Assistant Commissioner-II, Special Circle — RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2014) 68 VST 66

Hon'ble Judges : K.M. Joseph, J;K. Ramakrishnan, J

Bench : Division Bench

Advocate : S. Anil Kumar Trivandrum, K.S. Hariharan Nair and K. Umamaheswar, for the Appellant; Bobby John Pulikkaparambil, Government Pleader, for the Respondent

Judgement

K.M. Joseph, J.—The appellant is the writ petitioner. The writ petition was filed calling in question exhibits P1 to P6 and seeking stay of recovery steps pursuant to exhibits P1 to P6. By exhibits P1 to P6 the appellant has been assessed and penalty imposed for the years 2009-10, 2010-11 and 2011-12 in substance rejecting the claim of the appellant that there was high sea sales. The learned single judge1 did not find merit in the contention of the appellant that there is violation of principles of natural justice and he dismissed the writ petition noting that the remedy of the appellant is to file appeal before the statutory authority.

2. We heard the learned counsel for the appellant and learned Government Pleader. What is pointed out by the appellant is that the notices were issued under sections 25 and 67 of the Kerala Value Added Tax Act 2003 ("the Act", for short) wherein it was noted that there is no evidence or documents produced in support of the claim in the return of the appellant that there was exempted sale u/s 5(2) of the Central Sales Tax Act. No doubt, objections were called for. It is the case of the appellant that documents were produced by the appellant and in the orders however the officer was not satisfied with the documents. The officer has in fact proceeded to find various defects. There is finding that there is manipulation and further documents should have been produced. In other words,

matters which were not subject-matter of the notices served on the appellant have found reflection in the assessment orders and the penalty orders. Thus, the complaint of the appellant is that there is breach of the principles of natural justice. According to the appellant, if an opportunity had been given, the appellant would have been able to clear the doubts of the officer.

3. The learned Government Pleader, on the other hand, would point out that, notice for instance in respect of exhibit P1 was issued on December 5, 2012. The officer notes that the appellant was trying to evade acceptance of notice. Another notice was sent on December 17, 2012 wherein notice dated December 5, 2012 is referred to. Some documents were simply produced on January 1, 2013. The appellant did not insist for further hearing and it is only on January 7, 2013 that the officer proceeded to pass orders after considering the documents and finding that the appellant is not entitled to the benefit of exemption. According to the learned Government Pleader, it is appealable and there is no violation of principles of natural justice.

4. Principles of natural justice are essentially unembodied principles of equity. Their application depends on the context in which the question arises for consideration in each case. It is the justice of common law supplying the defects in the statute wherein principles of natural justice are not statutorily embedded.

5. In this case, the appellant has filed returns. She claimed benefit of exemption u/s 5(2) of the CST Act. (The second limb of section 5(2)). In other words, it is her case that there were high sea sales. The officer was not convinced. He resorted to section 25 of the Act. He also decided to invoke section 67 of the Act. Accordingly, notice is served. In the notice, after referring to the claim of the appellant and after referring to section 5(2) what is noted is that the appellant has not produced evidence/documents to prove the claim. No doubt, objections were called for. The appellant has within less than a month produced the documents in support of her claim. It is true that, the appellant did not file any objection as such. Apparently the appellant felt that what is required is only production of documents. It is, thereafter, that is after production of documents that the officer sifting the materials came to the conclusion that the appellant cannot be given the benefit for various reasons. None of those reasons have been put to the appellant admittedly. In the penalty notice no doubt, it is stated as follows:

The copies of documents furnished along with monthly returns are vague and not sufficient to prove the claim of exemption and it is clear that there is no transfer of documents of title to the goods before the goods crossed the customs frontiers of India. The dealer, M/s. Khaise International, Polayathode, Kollam has effected local sale of cashew nut and adduced false exemption claim and evaded tax legitimately due to the State which warrants imposition of penalty u/s 67(1) of the KVAT Act, 2003.

It is therefore proposed to impose upon M/s. Khaise International

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(32020225582), Polayathode, Kollam a penalty of Rs. 34,58,306 u/s 67(1) of the KVAT Act, 2003 being double the amount of tax evaded in this case.

6. The appellant''s objections were called. The appellant has not filed objection. The explanation of the appellant is that it is understood that what is involved is non-production of requisite documents and when the documents were produced the appellant was under the impression she will get relief.

7. We would think that, in the facts and circumstance of this case, the appellant is justified in contending that the appellant should not be driven to the alternative remedy as had the appellant been given a specific opportunity, she may have been able to explain her version and to establish the contention that there was indeed high sea sale as contemplated in law. A perusal of the orders would show that various defects have been found in the documents. The appellant was never asked to explain those defects. We are not concerned with the merits of the matter. We are concerned with the decision making process. When difficult questions arise, principles of natural justice would undoubtedly apply and interest of justice would indeed demand an opportunity of personal hearing being given to the parties. Unless the decision-maker has a closed mind a person with an open mind can always be persuaded to arrive at a correct decision by lending a hearing to the affected party. This is the substance of principle of natural justice. Accordingly, in the facts of this case, we would think that, the appellant should be given an opportunity of hearing treating the orders, exhibits P1 to P6, as notices served on him. We may also deal with the argument of the learned Government Pleader that a Bench of this court in an unreported decision has taken the view that unless the party demands for a hearing he need not be given an opportunity. Learned counsel for the appellant would point out that, that is a case where the defects were put to the party, still he did not insist for personal hearing. Unlike the facts-situation there this is a case where defects which ultimately found favour with the authority were not put to the appellant. Therefore, an occasion did not arise to demand right of hearing. A right of hearing is always connected inextricably with the need for hearing and the need for hearing will depend upon the facts of each case. Accordingly, we allow the writ appeal and set aside the judgment of the learned single judge1. We direct that, exhibits P1 to P6 shall be treated as notices served to the appellant. The appellant shall be present before the respondent on March 14, 2013. It will be open to the appellant to furnish objections to exhibits P1 to P6 on or before March 14, 2013. The officer will thereafter consider the objection and also hear the appellant and proceed to take a decision in the matter within one month thereafter.

1. See page 63 supra.

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