**(2013) 02 KL CK 0119**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No. 3783 of 2013 (W)

Rahmat Beevi APPELLANT

Vs

Assistant Commissioner-II, Special Circle RESPONDENT

**Date of Decision :** 13-02-2013

**Acts Referred:**

**Citation :** (2014) 68 VST 63

**Hon'ble Judges :** Antony Dominic, J

**Bench :** Single Bench

**Advocate :** K.B. Muhammad Kutty and K.M. Firoz, for the Appellant; Sojan James, Special Government Pleader, for the Respondent

## Judgement

Antony Dominic, J.—The petitioner is a dealer under the Kerala Value Added Tax Act, 2003. It is stated in the statement filed on behalf of the respondent that the petitioner claimed exemption on sales in the course of import for the years 2009-10, 2010-11 and 2011-12. On the basis that they have not filed any satisfactory document to prove the claim of exemption, they were issued notice to complete assessment levying tax at four per cent. Exhibit P9 is the notice issued u/s 25(1) for the assessment year 2009-10. Similar notices were issued concerning the other assessment years also.

2. Simultaneously, notices proposing to levy penalty u/s 67 were also issued and exhibit P9(a) is one such notice issued concerning the assessment year 2009-10. The notices were returned by the postal authorities with the endorsement that inspite of intimation, the notices were unclaimed.

3. Subsequently, the petitioners approached the respondents and received the notices. They submitted certain bill of entries and did not seek or avail of any opportunity of hearing. Thereafter, the assessment was completed and penalty was levied as per exhibits P1 to P6 orders. It is challenging exhibits P1 to P6 orders, this writ petition is filed.

4. The ground urged by the learned senior counsel for the petitioner is that

 

factual conclusions have been arrived at in the assessment orders and penalty orders without disclosing those facts to the petitioner. On that basis, counsel contended that exhibits P1 to P6 orders are passed in violation of the principles of natural justice and that for that reason, the orders are unsustainable.

5. However, exhibits P9 and P9(a) notices issued under sections 25(1) and 67(1) of the KVAT Act show that in both these notices, the petitioner was called upon to file objections and was also offered an opportunity of hearing. In response to these notices, the petitioner submitted the relevant bills of lading. On receipt of these bills, all that the first respondent has done is that he has gone through the documents produced by the petitioner, checked the transaction with the KAVATIS and has come to his conclusions which are stated in these orders. Similar is the case with the other factual conclusions stated in these orders.

6. Thus, the conclusions arrived at in the impugned orders are based on the documents produced by the petitioner. For arriving at such conclusions, I do not think it was necessary for the respondent to have issued notice other than the notices issued under sections 25(1) and 67(1) of the KVAT Act. This is also a case where after producing bills of lading, the petitioner did not seek any further opportunity of hearing.

7. In such circumstances, I am not persuaded to think that the orders impugned in this writ petition are vitiated by violation of the principles of natural justice. Hence, the remedy available to the petitioner is not in a proceeding under article 226 of the Constitution of India, but she has to seek statutory remedies available under the Act. The writ petition is dismissed.