(2012) 03 KL CK 0294

In the High Court Of Kerala

Case No : W.A. No. 520 of 2012

Shaiob Mohammed APPELLANT

Vs

State of Kerala and others RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 2 ILR (Ker) 606 : (2013) 60 VST 60

Hon'ble Judges : K. Vinod Chandran, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.A. Aziz and Sri N.N. Pankajakshan, for the Appellant; Bobby John, Government Pleader, for the Respondent

Judgement

Ramachandran Nair, J.—This Writ Appeal is filed against the judgment of the learned Single Judge declining to interfere with the conditional stay order issued by the appellate authority vide Ext. P-13 order directing payment of Rs. 4 lakhs and furnishing of security for the balance amount as condition for staying recovery of KVAT dues for the years 2007-08, 2008-09 and 2010-2011. We have heard learned counsel for the appellant and also learned Senior Government Pleader for the respondents.

2. The appellant was under the impression that revision will lie against the conditional stay order issued by the. Deputy Commissioner of Commercial Taxes (Appeals) before the Deputy Commissioner. Therefore, a revision petition was filed against the conditional stay order before the said authority and a direction is sought from this Court for disposal of the revision petition filed against the conditional stay order. The learned Single Judge declined to grant the relief and hence this Writ Appeal is filed raising this ground as well.

3. After hearing the appellant and the learned Senior Government Pleader and on going through the statutory provisions, we are unable to uphold the appellant''s contention that a revision u/s 57 is maintainable against conditional stay order issued by the Deputy Commissioner u/s 55(4) of the KVAT Act. Revisions

visualised u/s 57 are essentially against nonappealable orders or orders against which specific provision for appeal is not provided in the Act. Demand of tax and interest is based on assessment against which a statutory appeal is provided u/s 55. Section 55(4)(1) provides for payment of tax in terms of the demand irrespective of whether appeal is preferred or not. However, the proviso to the said section gives power to the appellate authority to issue such directions in regard to payment during pendency of the appeal under which power the appellate authority can grant stay subject to whatever conditions he deems fit. Orders issued u/s 55(5) disposing of the appeals filed before the Deputy Commissioner are appealable to the Tribunal in another round u/s 60 of the Act. However, the justification of the Tribunal is limited to final orders in appeal issued u/s 55(5) which means that conditional stay orders or orders rejecting stay applications are not appealable to the Tribunal. So far as the revision is concerned, scheme of the Act is such that revision before the Deputy Commissioner or Commissioner u/s 58 or u/s 59 respectively are against orders of the lower authorities. In other words, no revision will lie before the Deputy Commissioner against the order issued by the same, authority or appellate Deputy Commissioner of co-ordinate jurisdiction. So far as Section 59 is concerned, even though Deputy Commissioner''s orders are subject to revision before the Commissioner, it specifically excludes orders issued by the Deputy Commissioner (Appeals) in exercise of appellate power u/s 55. So much so, no statutory remedy is available against orders declining stay applications or conditional stay orders issued by the Deputy Commissioner u/s 55(4). The only remedy available is judicial review under Articles 226 and 227 of the Constitution of India before the High Court. So much so, the revision filed by the appellant against the conditional stay orders issued by the Deputy Commissioner (Appeals) before another Deputy Commissioner is misconceived and is not tenable as the Deputy Commissioner has no jurisdiction.

4. So far as the appellant''s challenge against the conditional stay orders are concerned, the learned Single Judge declined to interfere for the reason that the discretionary remedy exercised by the appellate authority should not be interfered with by the High Court without being satisfied that it is issued without jurisdiction or is otherwise arbitrary or untenable. What we notice is that the appellant is facing a crisis because the product in which the appellant is doing business is stated to be no more marketable in the State and the appellant is said to have stock, which is not sold for the last 4 years. The appellant''s counsel submitted that the appellant has requested the Assessing Officer for conducting an inspection so that there should not be controversy in assessment with regard to belated disposal of stock at reduced value or scrap value. We feel if appellant makes an application for inspection, the Assessing Officer should conduct an inspection of the shop and prepare an inventory, so that if any controversy arises after disposal of products, factual position will be on record. We, accordingly issue a direction to the Assessing Officer to conduct an inspection on request by the appellant. So far as the demand of Rs. 4 lakhs as condition for stay is

concerned, we feel some quantum reduction can be granted considering the financial difficulty expressed by the appellant. We accordingly modify the judgment of the learned Single Judge and Ext. P-13 conditional stay order by reducing the payment to Rs. 3 lakhs. The appellant is granted time till 30-3-2012 to make payment as above. There will also be a direction to the appellate authority to dispose of the appeals after hearing the parties within a period of two months of receipt of a copy of this judgment.

This Writ Appeal is disposed of modifying the judgment of the learned Single Judge as above.