(2015) 10 KL CK 0177

In the High Court Of Kerala

Case No : Writ Petition (C). No. 30189 of 2015 (W)

Shamon K.S. APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 ILR (Ker) 469 : (2015) 5 KHC 318 : (2015) 4 KLJ 444 : (2015) 4 KLT 511 : (2016) 88 VST 186

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : L. Rajesh Narayan, for the Appellant; Liju V. Stephen, Government Pleader, Advocates for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J—The challenge in the writ petition is against Ext.P4 order of assessment that finalises an assessment in relation to the petitioner under the KVAT Act, for the period from 01.08.2015 to 03.09.2015, on best judgment basis. The main contention of the petitioner in the writ petition is that Ext.P4 order was passed without affording the petitioner an effective opportunity of showing cause against the proposal to complete the assessment on best judgment basis.

2. I have heard Sri. Rajesh Narayan Iyer, the learned counsel for the petitioner as well as Sri. Liju V. Stephen, the learned Government Pleader appearing for the respondents.

3. This writ petition presents yet another instance where an assessee has come knocking on the doors of this court, challenging an assessment order passed under a taxing statute. Such instances have become frequent in recent times and, it is not always that this court, while exercising its discretionary powers under Art.226 of the Constitution of India, can tell an assessee off at the gates, asking him to avail the alternate remedy under the respective statute. Frighteningly frequent are those cases where the assessments are completed

mechanically, and without considering the objections put forth by the assessee, that the time has now come for this Court to, once again, sound a note of caution to the tax administration in the State.

4. Under the KVAT Act an assessee is expected to do a self-assessment of his tax liability for the return period. Unless on a scrutiny, the returns submitted by him, or the tax paid by him based on the said returns, is demonstrated to be incorrect or otherwise irregular, the self-assessment done by the assessee is treated as final. It is only when there is a discrepancy in the returns filed, or in the tax paid, that the revenue authorities are called upon to determine the tax liability of the assessee on best judgement basis. As the phrase itself would signify, an assessment on "best judgment basis" is to be resorted to only when all attempts, at finalising an assessment based on available material, fail. This is the scheme envisaged for completion of assessments under the KVAT Act and Rules, as is evident from a reading of Sections 21, 22, 24 and 25 of the KVAT Act read with Rules 34, 35 and 38 of the KVAT Rules.

5. A reading of the aforementioned statutory provisions would indicate that where a return filed by a dealer is found to be defective or not accompanied by supporting documents or is found to be incorrect, the revenue authority can issue a notice to the dealer intimating him of the rejection of his returns, and providing him with an opportunity to file a fresh return, or for producing documents and accounts to prove the correctness of the return filed, within a period of 15 days from the date of notice. Thereafter, if no return is filed within the time granted, or the documents sought for are not produced, the revenue authority is expected to issue a fresh notice to the dealer intimating him of his decision to proceed with a best judgment assessment under S. 25 of the KVAT Act. This latter notice is essentially in the nature of a show cause notice, asking the dealer to show cause as to why the assessment should not be completed on best judgment basis. For the opportunity provided to the dealer to be reasonable and meaningful, the time granted to the dealer must be sufficient to enable him to appear before the authority concerned and show cause against the said proposal. No doubt, the time to be granted must necessarily be left to the discretion of the authority concerned. The discretion, however, is one that has to be exercised after taking into account the difficulties, if any, put forward by the dealer concerned and should not, in any event, be less than 7 days from the date of service of the notice on the dealer. It is disturbing to note that, notwithstanding the decision of this Court in Suzion Infrastructure Service Ltd. Vs. The Commercial Tax Officer (W.C.), (2010) 2 KLJ 721 : (2010) 35 VST 451 where the practice of revenue authorities, in issuing a composite notice calling for fresh returns/documents/accounts as well as for the hearing in connection with the best judgment assessment that is proposed, was deprecated, the revenue authorities continue to follow such an unfair and arbitrary procedure while completing assessments on best judgment basis.

6. In the instant case, a mere perusal of Ext. P4 order would indicate that after

serving a notice to the petitioner, intimating him of the proposal to complete the assessment for the assessment year on best judgment basis, the respondent assessing authority proceeded to pass orders on the very next day, thereby rendering the very purpose of the notice meaningless. Ext. P4 order is vitiated by a non-compliance with the rules of natural justice and I quash the same. The respondent assessing authority shall complete the assessment in relation to the petitioner afresh, after affording him an opportunity of hearing in accordance with the directions in this judgment. The fresh order of assessment shall be passed within a period of one month from the date of receipt of a copy of this judgment.

7. Before parting with this case, it would be useful to remind the revenue authorities in the State that the taxman is today an abhorred person and, perhaps, for a valid reason. He is often seen as a person who arrives, armed with the authority of law, to take money away from a person who has it. The animosity against taxes is a shared one and the oft-quoted expression by Benjamin Franklin that "in this world nothing can be said to be certain, except death and taxes" echoes the sentiments that successive generations of people have harboured against taxes. This state of affairs must change, for an honest, fair and efficient tax administration can bring about a substantial decline in litigation in this area of law and ensure happiness matching utilitarian expectations. I therefore direct the first respondent to take note of the observations in this judgment, and also bring this judgment to the notice of the Commissioner of Commercial Taxes, so that appropriate circulars can be issued, for compliance by the assessing authorities with the procedural requirements incidental to completion of assessments under the KVAT Act.