(2023) 06 KL CK 0380

In the High Court Of Kerala

Case No : Writ Petition (C) No. 18803 Of 2023

S.K. Eldhose (Skaria Karikkamattathil Eldhose) — APPELLANT

Vs

State Tax Officer — RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Central Goods and Services Tax Act, 2017 — Section 16(2)(c), 61, 73, 107, 107(4), 170
Central Goods and Services Tax Rules, 2017 — Rule 99(1)

Citation : (2023) 06 KL CK 0380

Hon'ble Judges : C.S Dias, J

Bench : Single Bench

Advocate : Aji V.Dev, M.G.Shaji, Alan Priyadarshi Dev, S.Sajeevan, P.R.Sreejith, Thushara James

Final Decision : Dismissed

Judgement

C.S.Dias, J

1. The writ petition is filed to quash Ext.P5 proceedings and Ext.P5(a) summary order passed by the first respondent.

2. The petitioner's case is that, it is a proprietary-ship concern having CGST and KSGST registration. The petitioner was served with Ext.P1 – FORM GST ASMT-10 - notice under Section 61 of the Goods and Services Tax Act, 2017 (in short ' GST Act') and Rule 99(1) of the Goods and Services Tax Rules (in short 'GST Rules'] framed thereunder, alleging that the petitioner had claimed excess input tax (ITC) during the year 2017-2018 in violation of Section 16(2)(c) of the GST Act. The petitioner explained his case to the best of his understanding and pointed out the discrepancies. He was under the impression that the issue was settled forever. Surprisingly, in the last week, the petitioner has been served with Ext.P3 revenue recovery notice demanding an amount of Rs.2,82,040/-. The petitioner has not received any order passed pursuant to Ext.P1 notice. The first

respondent has intimated that a show case notice and assessment order passed under Section 73 of the Act were uploaded on the GST portal relating to the year 2017-2018, but the same was not brought to the notice of the petitioner. Then the petitioner downloaded Ext.P4 show cause notice, Ext.P5 assessment order and Ext.P5(a) summary of the assessment order. A perusal of Exts.P4 and P5 show that Ext.P5 is passed entirely on a different ground from what is pointed out in Ext.P1. Hence, the entire proceedings leading to Exts.P5 and P5(a) are vitiated and bad in the eyes of law. Since Exts.P5 and P5 (a) were not brought to the notice of the petitioner, his remedy to file a statutory appeal under Section 107 of the GST Act is time barred. The petitioner has no alternative remedy, but to approach this Court. Hence, the writ petition.

2. Heard;SriAji.V.Dev, the learned counsel appearing for the petitioner and Smt.Thushara James, the learned Government Pleader appearing for the respondents.

3. Sri.Aji.V.Dev reiterated the contentions in the writ petition. He submitted that it is only because the petitioner did not receive Exts.P5 and P5(a) that he could not file the statutory appeal within the prescribed time period. Exts.P5 and P5(a) establish that the same is passed in egregious violation of the provisions of the GST Act and the GST Rules framed thereunder. The petitioner has made out extra-ordinary grounds warranting interference by this Court under Article 226 of the Constitution of India. Hence, Exts.P5 and P5(a) may be set aside.

4. Smt.Thushara James countered the above submissions by arguing that her office records reveal that the petitioner was served with DRC-01A notice on 3.3.2021 by email in the petitioner's registered e-mail ID. After the commencement of the GST regime, all the communications are sent through the GST portal. Therefore, the petitioner cannot feign ignorance and contend that he was unaware of the communications sent by the respondents. The contentions raised in the writ petition are disputed questions of fact, which may not be agitated in a writ petition. Hence, the writ petition may be dismissed.

5. The petitioner admits that Exts.P5 and P5(a) were passed on 7.1.2022. He now asserts that, as he was unaware of the above-mentioned orders, he was precluded from filing a statutory appeal under Section 170 of the GST Act within the permitted time period of four months.

6. This Court in Penuel Nexus Pvt. Ltd v. Additional Commissioner and others [W.P(C) No.15574/2023] has categorically held that an appeal under Section 107(4) of the Act cannot be filed beyond the prescribed time period, in view of the stipulations in the enactment.

7. Now what the petitioner could not do directly by filing an appeal, cannot be permitted to be done in a writ petition filed under Article 226 of the Constitution of India, that too to decide on disputed questions of fact i.e, Ext.P5 show cause notice and Ext.P5(a) assessment order were allegedly not served on him. I do not find any extra-ordinary circumstance made out in the writ petition warranting

interference with Exts.P5 and P5(a) by invoking the plenary powers of this Court under Article 226 of the Constitution of India.

The writ petition is merit-less and is consequently dismissed.

