(2024) 02 KL CK 0171

In the High Court Of Kerala

Case No : Writ Appeal No. 190 Of 2024

Solve Plastic Products Private Limited APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 19-02-2024

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2024) 02 KL CK 0171

Hon'ble Judges : A.Muhamed Mustaque, J;Shoba Annamma Eapen, J

Bench : Division Bench

Advocate : Raja Kannan, M.Gopikrishnan Nambiar, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Shamsudheen, Jose Joseph

Final Decision : Allowed

Judgement

Shoba Annamma Eapen, J

1. This intra court appeal has been filed by the writ petitioner aggrieved by the judgment dated 01.02.204 in WP(C) No.4073 of 2024 of the learned Single Judge.

2. The appellant/petitioner filed the writ petition aggrieved by Ext.P4 order passed by the second respondent, allegedly, without considering the objection filed by them against the excess availment of Input Tax Credit. It was the further case of the appellant/petitioner that Ext.P4 order was passed without affording an opportunity to the appellant/petitioner to submit the books of accounts and other documentary evidence to the second respondent despite making a request in Ext.P2 reply. It was further alleged that the appellant had filed a rectification petition for correction of GSTR-4B for the month of August, 2017 and Ext.P4 order was passed pending consideration of the same. However, the learned Single Judge dismissed the writ petition, declining interference. Aggrieved by this, the appellant/petitioner has come up before this Court in appeal.

3. Heard the learned counsel for the appellant/petitioner as well as the learned

Special Government Pleader.

4. Ext.P1 notice was issued for determining the tax liability on scrutiny of returns. In Ext.P1, the second respondent granted 15 days' time to file objection and an opportunity of hearing was also given on 21.10.2023. Pursuant to Ext.P1 notice, the appellant/petitioner filed Ext.P2 reply, wherein it was requested as follows;

"In view of the above, it may please be noted that there is no willful mis-statement of suppression of facts or evasion of tax. We request your good-self to treat this reply as our preliminary reply to the notice referred 1st above. We reserve our right to file an additional reply also. We further request your good-self to re-schedule the date of personal hearing, preferably after 2 weeks, in view of the finalisation of the accounts, under the Income Tax Act, and the Companies Act.

At any rate, we may be afforded with an opportunity of hearing, preferably after 2 weeks, for production of books of accounts and such other details, prior to finalisation of the notice referred first above."

Though there was a specific request to reschedule the date of personal hearing as well as for production of books of accounts, the second respondent has not acceded to the said request. Thereafter, Ext.P4 order was passed on 28.12.2023, i.e., after two months of receipt of Ext.P2 reply.

5. On a perusal of Ext.P4 order, it appears that the second respondent has not considered the issue regarding the excess availment of Input Tax Credit, which was clearly explained in the reply filed by the appellant. Ext.P4 order is silent regarding the request made by the appellant/petitioner for rescheduling the date of personal hearing and for time for production of books of accounts and such other details before finalization of the proceedings. The reason stated in Ext.P4 order for passing the same is that since the assessment is in respect of 2017-18, the statutory time limit for determination of tax liability was about to expire.

6. Ext.P1 notice in respect of the assessment year 2017-18 is dated 22.09.2023, which was issued almost after four years. The second respondent ought to have granted a further opportunity as requested by the appellant/petitioner for hearing as well as for production of books of accounts and such other details before the finalization of the notice. Having not done so, there is a clear violation of principles of natural justice. Therefore, we are of the view that this is a fit case where the power under Article 226 of the Constitution of India can be invoked by interfering with the impugned Ext.P4 order passed by the second respondent.

Accordingly, the writ appeal is allowed, as follows;

A.Ext.P4 order is set aside.

B.The second respondent is directed to afford the appellant/petitioner two weeks' time from today to produce the books of accounts as well as other documents.

C.The second respondent shall also afford the appellant/petitioner an opportunity of personal hearing before passing any further order.

The petitioner shall produce a certified copy of this judgment before the second respondent for compliance.