(2013) 12 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No''s. 56986, 56987 to 56997 and 58505 to 58570 of 2013 (T-RES)

Sowmyashree Traders APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2014) 78 KarLJ 154

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : M. Thirumalesh, for the Appellant; S.V. Giri Kumar, Additional Government Advocate, for the Respondent

Judgement

B.V. Nagarathna, J.—The reassessment orders dated 5-9-2013 passed u/s 39(1) of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as the ''KVAT Act'') as well as u/s 9(3) of the Central Sales Tax Act, 1956 (hereinafter referred to as the ''CST Act'') read with Section 39(1) of the KVAT Act by the 3rd respondent-Assistant Commissioner of Commercial Taxes (Audit and Recovery), Tiptur for the assessment years 2006-2007 to 2011-2012 (Annexures-D, F, H, K, M and P and E, G, J, L, N and Q respectively) are assailed in these writ petitions. Briefly stated, the facts are that the petitioner was registered as a dealer under the provisions of the KVAT Act, 2003 as well as Central Sales Tax Act, 1956. The petitioner was engaged in the business of trading in agricultural produce in APMC Yard, Tiptur. The petitioner gave an intimation of closure of his business by a letter dated 22-12-2010 before the concerned authority. The closure was with effect from 30-11-2010. It is stated that the petitioner also surrendered his registration certificate under the two Acts. When the matter stood thus, 3rd respondent issued notice to the petitioner on 1-6-2013 with regard to inspection of place of the business and to verify the books of accounts for the aforesaid tax periods. The petitioner is stated to have submitted his letter dated 13-6-2013 seeking 15 days time to produce the books of accounts, a copy of which is produced at Annexure-A. Subsequently, petitioner sought for fixation of a date for verification of books of accounts by his further communication dated 19-7-2013, a copy of which is produced at Annexure-B. Petitioner later visited the office of the 3rd respondent on 19-9-2013 making a similar request. However, in the interregnum, the impugned reassessment orders were passed by the 3rd respondent-authority. Assailing those orders, these writ petitions have been filed.

2. I have heard the learned Counsel for petitioner and learned AGA for respondents and perused the material on record.

3. The main grievance of the petitioner is that the impugned orders have been passed without verifying the books of accounts and without giving an opportunity to the petitioner to file his objections to the reassessment proceedings. It is therefore contended that the impugned orders are in violation of the principles of natural justice. Hence, an opportunity may be given to the petitioner to appear before the 3rd respondent so as to enable him to produce the relevant books of accounts and put forth his case, by quashing the impugned orders is the submission of the petitioner''s Counsel.

4. Learned AGA however supports the impugned orders and contends that despite several opportunities being given, petitioner has not availed of the same and that the petitioner is guilty of several illegalities committed under the two enactments. He therefore states that there is no merit in these writ petitions.

5. Having heard the Counsel on both sides and on perusal of the material on record, it is noted that reassessment proceedings were commenced by the 3rd respondent by issuance of notice to the petitioner and the notice called for books of accounts. In fact notice was also served on the petitioner. In response to the same, petitioner appeared on 13-6-2013 as well as on 19-7-2013 before the 3rd respondent-authority seeking a date for production of books of accounts. However, it is noted that no specific date was given to the petitioner for that purpose. When the petitioner subsequently appeared before the 3rd respondent-authority on 19-9-2013, he came to know that the impugned orders were passed on 15-11-2013. Petitioner is therefore aggrieved by the fact that the impugned orders have been passed without looking into books of accounts and without giving an opportunity to the petitioner to put forth his case before the 3rd respondent-authority. Having regard to the nature of the proceedings initiated by the 3rd respondent and the fact that the petitioner has not been able to make his submission before that authority, this is a fit case where an opportunity ought to be given to the petitioner to appear before the 3rd respondent-authority.

6. In this regard, petitioner is directed to appear before the 3rd respondent-authority on 27-1-2014 without insisting on a fresh notice from that authority along with books of accounts and all other documents on that date. If the petitioner so appears, then the 3rd respondent-authority to verify the books of accounts and to conclude the reassessment proceedings under both the acts in accordance with law. In the result, the writ petitions are disposed of as follows:

1. Impugned orders are quashed.

2. Petitioner is directed to appear before the 3rd respondent-authority on 27-1-2014 along with the books of accounts and other relevant documents without insisting on a fresh notice from that authority.

3. 3rd respondent to dispose of the reassessment proceedings after giving an opportunity to the petitioner and in accordance with law.

