(2013) 04 KL CK 0064

In the High Court Of Kerala

Case No : WP (C) . No. 8503 of 2013 (K)

The Kerala Water Authority	APPELLANT
Vs	
The Inspecting Assistant Commissioner,(Team Head), The Deputy Commissioner, Commercial Taxes and The Commercial Tax Officer(Wc and Lt), Office of The Deputy Commissioner, Commercial Taxes Pathanamthitta	RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 04 KL CK 0064

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : T.C. Suresh Menon, Sri. P.S. appu and Sri. A.R. Nimod, for the Appellant; Shoba Annamma Eapen By Sr Government Pleader, for the Respondent

Judgement

Antony Dominic, J.—Ext. P1 order of assessment was passed against the petitioner under the KGST Act for the assessment years 1993 to 2005. The grievance of the petitioner is that there is a patent mistake in Ext. P1 assessment order concerning the year 2001-02 and that they had filed application for its rectification, which was directed to be considered in Ext. P2 judgment rendered by this Court in WP(C) Nos. 15557 and 15606/10. It is stated that without passing orders thereon, Ext. P3 demand notice has been issued calling upon the petitioner to remit Rs. 39,82,587/-. In view of the case of the petitioner regarding the pendency of their application for rectification of the assessment order, the case was adjourned with a direction to the learned Government Pleader to obtain instructions in the matter. On the basis of the instructions that were obtained, learned Government Pleader states that in Ext. P2 judgment, this Court directed consideration of the rectification applications for the period from 1993-94 till 1999-2000. It is stated that Ext. P3 demand notice now issued pertains to the period from 2000-01 to 2004-05. She also points out that the mistake in Ext. P1 that is now pointed out by the petitioner pertains to 2001-02 and she states that in respect of that year, there was no application for rectification.

2. Although the learned Government Pleader is perfectly justified in her contention, still fact remains that in Ext. P1 assessment order, there is, prima facie, a clerical mistake in the total and taxable turnover determined by the assessing authority in so far as the assessment year 2001-02 is concerned and the only objection to its correction is that, no application has been filed. Since the respondent themselves admits that prima facie, a clerical mistake has crept in the determination of total and taxable turnover for the year 2001-02, the same should necessarily be corrected and I direct the 3rd respondent to do so. This the 3rd respondent shall do, as expeditiously as possible, at any rate within 4 weeks of production of a copy of this judgment.

3. Coming to Ext. P3, the notice of demand now issued to the petitioner, in view of the above directions, the petitioner cannot be called upon to pay the tax due for the assessment year 2001-02 and for the remaining years, the petitioner should pay the tax due. Therefore, I dispose of this writ petition with the direction that the 3rd respondent shall examine and correct the mistake, if any, in Ext. P1 as directed above and in the meanwhile, demand for the assessment year 2001-02 contained in Ext. P3 alone will be kept in abeyance.

Petitioner will produce a copy of this judgment along with a copy of the writ petition before the 3rd respondent for compliance.