(2024) 04 KL CK 0045

In the High Court Of Kerala

Case No : Writ Petition (C) No. 9709 Of 2015

Unnikrishnan T.A — APPELLANT

Vs

Assistant Commissioner (Assessment) — RESPONDENT

Date of Decision : 03-04-2024

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 55, 66

Citation : (2024) 04 KL CK 0045

Hon'ble Judges : Gopinath P, J

Bench : Single Bench

Advocate : S.Anil Kumar, K.S.Hariharan Nair, K.Umamaheswar, Arun Ajay Shankar

Final Decision : Disposed Of

Judgement

Gopinath P, J

1. The petitioner suffered Ext.P1 series of assessment orders under the Kerala Value Added Tax Act, 2003 (hereinafter referred to as the 'KVAT Act) for assessment years 2005-06 to 2012-13. The petitioner has not preferred any appeal under Section 55 of the KVAT Act before the first Appellate Authority. It is the case of the petitioner that the rate of tax applicable on the products dealt with by the petitioner was finally settled by the Supreme Court through Ext.P5 judgment in M/s. M.P. Agencies v. State of Kerala; (2015) 7 SCC 102. It is submitted that, going by the aforesaid judgment, the rate of tax levied on the petitioner is much on the higher side. It is submitted that the petitioner had preferred Exts.P7 and P7(a) representations to the Commercial Tax Officer, Alappuzha to extend the benefit of the judgment of the Supreme Court, to the petitioner.

2. The learned Government Pleader submits that Exts.P7 and P7(a) cannot be considered as they are not statutory applications for rectification. It is submitted that, under Section 66 of the KVAT Act, an application for rectification can be

filed only within a period of four years from the year in which the order was passed. It is further submitted that, though the assessment years in question are 2005-06 to 2012-13, the petitioner has not even filed separate applications in respect of the each of the assessment orders issued. It is therefore, submitted that Exts.P7 and P7 (a) cannot be considered as applications for rectification under Section 66 of the KVAT Act. It is submitted that, if the petitioner was, in any manner, aggrieved by the orders of assessment, he should have approached the first Appellate Authority by filing an appeal under Section 55 of the KVAT Act.

3. The learned counsel for the petitioner, in reply, would submit that Section 55 of the KVAT Act has been amended by the Finance Act, 2023. It is submitted that, by virtue of the 2nd proviso added to Section 55 of the KVAT Act, the assessees who had not filed appeals within the time prescribed for any reasons whatsoever, were permitted to file a fresh appeal before the Appellate Authority, on or before 30.9.2023. It is submitted that, in the light of the above provision and considering the fact that this writ petition was pending in this Court from 2015 till today (3.4.2024), the petitioner may be permitted to file an appeal before the first Appellate Authority by excluding the period when this writ petition was pending before this Court for the purposes of the 2nd proviso to Section 55 of the KVAT Act (as incorporated by the Finance Act, 2023).

4. Having heard the learned counsel for the petitioner and the learned Government Pleader, I am of the view that the petitioner can be permitted to file separate appeals against each of the orders of assessment for the assessment years 2005-06 to 2012-13 before the jurisdictional first Appellate Authority considering the fact that this writ petition has been pending from 25.3.2015 till today (3.4.2024). If such appeals are filed by the petitioner before the first Appellate Authority within one month from the date of receipt of a certified copy of this judgment, the same shall be treated as appeals filed within the time permitted under the 2nd proviso to Section 55 of the KVAT Act (incorporated by the Finance Act, 2023) and such appeals shall be heard and disposed of in accordance with the law and after affording an opportunity of hearing to the petitioner.

The writ petition is disposed of in the above manner. I make it clear that I have not expressed any opinion on the merits of the matter.

