

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

OT.Rev.No.170 of 2015

AGAINST THE ORDER/JUDGMENT IN TAVAT NO.7/2015 of VALUE ADDED TAX
APPELLATE TRIBUNAL,ADDL.BENCH,PKD

REVISION PETITIONER/APPELLANT/ASSESSEE:

RADHAKRISHNAN K.
M/S.R.K.TRADERS, RUBBER DEALER, NEAR SBT KOTTAPPURAM
PALAKKAD.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT/RESPONDENT/RESPONDENT:

STATE OF KERALA

BY SENIOR GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON
13-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

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O.T.Rev.No.170 of 2015

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Dated this the 13th day of November, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

1. Admitted. Learned Senior Government Pleader takes notice for the respondents.
2. We have heard the learned counsel for the revision petitioner and the learned Senior Government Pleader for final disposal of revision on merits.
3. On 29.11.2010, a vehicle carrying the goods of the petitioner was intercepted by the Intelligence Wing of the Commercial Taxes Department. On grounds which are disclosed in Annexure C, there was detention of vehicle followed by a demand for security for its release. The petitioner got release of the vehicle by depositing the amounts as security on

29.11.2010 itself. Thereafter, he was served with a notice for hearing on 24.05.2014 in connection with the adjudication proceedings. The petitioner issued a communication to the Intelligence Officer requiring that the hearing be rescheduled, since the petitioner's representative was sick. The materials show that the said request was delivered to the officer concerned on 26.05.2014. However, a final order was issued on 31.05.2014 and communicated on 24.06.2014, without any further opportunity of hearing being extended to the petitioner.

4. While the petitioner challenged the aforesaid conclusion of proceedings by the Intelligence Officer in two rounds of appeal before the statutory authorities, the ground raised by him revolved on the plea of violation of principles of natural justice. The authorities found that it cannot be said that rule of hearing was not adequately extended but also held that the materials tend to indicate that there was a chance of multiple transportation using the same invoice.

5. Having looked into the materials, we are of the view that what had to be considered by the authority at the first instance was a comparison of the materials that the petitioner had to show in defence as against the proposal contained in the detentional notice. We think that interest of justice is required that an opportunity of hearing ought to have been given to the petitioner. To that extent, we are sure that the order of the Tribunal affirming the order of the First Appellate Authority is vitiated on an issue of law; to wit, that the penalty order is vitiated by non-compliance of due procedure in accordance with law, which is apparent from the record.

6. In the result, the impugned orders are set aside and the Intelligence Officer concerned is directed to afford the petitioner a fresh opportunity of hearing on Annexure C notice which would include an opportunity to place written objections and materials. This shall be on condition that the appellant pays to the State an amount of Rs.10,000/- (Rupees

ten thousand only) as costs on or before 19.12.2015 and marks appearance in the Office of the Intelligence Officer concerned on 22.12.2015.

Revision ordered accordingly.

sd/-

Thottathil B.Radhakrishnan, Judge

sd/-

Anu Sivaraman, Judge

sj