IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 1307 of 2015 (K)

PETITIONER(S):

P.K SHAMSUDHEEN, AGED 56 YEARS
KAITHAPPULLY INDUSTRIES,
CHENDRAPPINNI, THRISSUR DISTRICT - 680 687.

BY ADVS.SRI.P.N.DAMODARAN NAMBOODIRI
SMT.K.P.RANI

RESPONDENT(S):

1.THE COMMERCIAL TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES,
KODUNGALLUR - 680 664.

2.THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAX CHECK-POST,
DEPARTMENT OF COMMERCIAL TAXES,
WALAYAR - 678 624.

3.THE INSPECTING ASST. COMMISSIONER,
COMMERCIAL TAXES DEPARTMENT,
IRINJALAKUDA - 680 121.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.1307/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE TAX IDENTIFICATION NUMBER CERTIFICATE NO.67079 DATED 28.5.2007 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P2: COPY OF THE ANNUAL RETURN FOR THE YEAR 2010-11 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P3: COPY OF THE NOTICE NO.3208099005/2010-11 DATED 21.10.2014 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P4: COPY OF THE CIRCULAR NO.C1-45370/09/CT DATED 16.11.2009 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

EXT.P5: COPY OF THE REQUEST DATED 11.11.2014 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P6: COPY OF THE STATEMENT NO.32081099005/2010-11 DATED 28.11.2014 ISSUED BY FIRST RESPONDENT TO THE PETITIONER.

EXT.P7: COPY OF THE REQUEST DATED 9.12.2014 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P8: COPY OF THE ASSESSMENT ORDER NO.32081099005/2010-11 DATED 22.12.2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.1307 OF 2015 (K)

Dated this the 14th day of January, 2015

J U D G M E N T

The petitioner challenges Ext.P8 assessment order, passed under the Central Sales Tax Act, for the assessment year 2010-11. The sole ground of challenge against Ext.P8 order is that the said order was allegedly passed without complying with the rules of natural justice, in that, the petitioner was not given copies of the documents sought for by him, prior to completing the assessment. The petitioner would refer to Ext.P3 notice, that was issued by the 1st respondent, and Ext.P5 reply that was preferred by the petitioner in response to the said notice, to contend that, insofar as the 1st respondent had, in Ext.P3 notice, relied on certain documents, the petitioner had to be supplied copies of the said documents so as to prefer an effective reply to the notice issued to him. In the writ petition, it is the case of the petitioner that Ext.P8 order was passed without providing the petitioner with copies of the documents relied on by the 1st respondent, thereby vitiating the said order and rendering it illegal. It is under these circumstances that Ext.P8 order is impugned in the writ petition.

2. I have heard Sri.P.N.D.Namboothiri, the learned counsel appearing for the petitioner as also Smt.Sobha Annamma Eappen, the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case, I note that while passing Ext.P8 order, the 1st respondent had not acceeded to the request of the petitioner for supply of copies of certain documents. The issue to be considered, however, is whether the 1st respondent was justified in denying the said request of the petitioner. In Ext.P3 notice, the 1st respondent relies primarily on a discrepancy between the data found in the KVATIS software maintained by the department, and the return submitted by the petitioner for the asessment year in question. There is no reliance placed on any document, other than the data available on the KVATIS, in the notice issued to the petitioner. In that factual backdrop, the refusal by the 1st respondent to supply copies of the documents sought for by the petitioner cannot be seen as denying to the petitioner an effective opportunity to represent his case before the 1st respondent.

In as much as the 1st respondent had not relied on any document in Ext.P3 notice, there was no necessity for the 1st respondent to supply copies of any document to the petitioner. If it is the case of the petitioner that the details in the KVATIS software are wrong, then, it is for the petitioner to establish before the authorities concerned that the said details are wrong or that they have been incorrectly entered in the software. Ext.P8 order cannot, therefore, be said to be vitiated on account of non-compliance with the rules of natural justice.

In my view, the petitioner has an effective alternate remedy against Ext.P8 order, in that he can prefer an appeal before the appellate authority under the KVAt Act after complying with the procedural formalities for the same. Thus, leaving it open to the petitioner to pursue his appellate remedy under the KVAT Act against Ext.P8 order of assessment, I dismiss this writ petition as not maintainable. In view of the submission made by counsel for the petitioner, that the petitioner is now faced with a notice of demand in respect of the amounts confirmed against him by Ext.P8 order, I stay the recovery proceedings pursuant to Ext.P8 order, and notice of demand, for a period of two weeks, so as to enable the petitioner to approach the appellate authority under the KVAT Act, with an appeal and stay petition. Save to the above extent, the writ petition in its challenge against Ext.P8 order is dismissed as not maintainable.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp