

John Thomas Vs. Intelligence Officer (investon Br)-ii

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Court : Kerala

Decided On : Aug-27-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : John Thomas

Respondent : intelligence Officer (investon Br)-ii

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN WEDNESDAY, THE 27TH DAY OF AUGUST 2014 5TH BHADRA, 1936 WP(C).NO. 21933 OF 2014(N) ----- PETITIONER: ----- JOHN THOMAS, KURUMPELIL ELECTRONICS, MAIN ROAD, PUNALUR. BY ADVS.SRI.HARISANKAR V. MENON, SMT.MEERA V.MENON, SRI.MAHESH V.MENON. RESPONDENTS: ----- 1. INTELLIGENCE OFFICER (INVESTIGATION BRANCH) - II, DEPARTMENT OF COMMERCIAL TAXES, KOLLAM - 691 001.

2. DEPUTY COMMISSIONER, DEPARTMENT OF COMMERCIAL TAXES, KOLLAM - 691 001. BY SR.GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPEN. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 2708-2014, ALONG WITH W.P.(C).NO.21993/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Prv. W.P.(C).NO.21933/2014 - N: APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1: COPY OF

ORDER

ISSUED BY THE 1ST RESPONDENT DATED 31.05.2014. EXHIBIT P1(a): COPY OF

ORDER

ISSUED BY THE 1ST RESPONDENT DATED 31.05.2014. EXHIBIT P2: COPY OF REVISION PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 20.06.2014. EXHIBIT P2(a): COPY OF REVISION PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 20.06.2014. EXHIBIT P3: COPY OF

ORDER

ISSUED BY THE 2ND RESPONDENT DATED 11.08.2014. RESPONDENTS' EXHIBITS: NIL. //TRUE COPY// P.S. TO JUDGE. Prv. K.Vinod Chandran, J.

----- W.P.(C).Nos.21933 of 2014-N & 21993 of 2014-Y ----- Dated this the 27th day of August, 2014

JUDGMENT

John Thomas was the awarder of a works contract to V.P.Kumaraswamy. They are the respective writ petitioners herein and they are referred to as the "awarder" and "contractor". The contractor was not a registered dealer and the awarder, a registered dealer, did not deduct tax from the award amounts, when making payments; as provided under Section 10 of the Kerala Value Added Tax Act, 2003 [for short "KVAT Act"]. The awarder was proceeded against for penalty under Section 67 and a penalty twice the amount of tax was imposed. The contractor was also proceeded against under Section 67 and a likewise penalty was imposed on the contractor also. Both filed revisions from the respective orders of penalty. The revisional authority, as an interim measure, in the case of the awarder, directed payment of 30% of the demand and in the case of the contractor, 35%; for keeping WP(C).Nos.21933/2014 & - 2 - 21993/2014 the recovery in abeyance. The petitioners assail the said interim orders of the revisional authority.

2. The learned counsel for the petitioner submits that it is on the same tax component that the penalty has been made and that the contractor had, subsequent to the imposition of penalty, applied for registration and got himself registered with retrospective effect. The tax element has also been satisfied by the contractor, with interest. In such circumstances, the petitioners seek that the conditional orders passed in both the cases may be stayed till the disposal of the revisions.

3. Having heard both sides, this Court is not inclined to interfere with the discretion exercised by the Intelligence Officer, since even going by the conditional orders, only a portion of the demand would come to the State. The principles for imposition of penalty would not also be confined to recovery of tax. Hence, the exercise of discretion under Article 226 of the Constitution is declined and both the interim orders are sustained. WP(C).Nos.21933/2014 & - 3 - 21993/2014 4. However, the petitioners are permitted to pay up the amounts, directed to be paid by the revisional authority, in two equal monthly instalments. The 1st instalment shall be paid on or before 27.09.2014 and the subsequent instalment on or before 27.10.2014. If one single default is committed in the instalment granted by this Court, the respondents are entitled to proceed for recovery. Writ petition stands dismissed, with the above observation. Sd/- K.Vinod Chandran, Judge vku. (true copy)

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