

State of Kerala Vs. V. Mammu

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Court : Kerala

Decided On : Sep-26-2014

Judge : Honourable Mr.Justice Antony Dominic

Appellant : State of Kerala

Respondent : V. Mammu

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN FRIDAY, THE 26TH DAY OF SEPTEMBER 2014 4TH ASWINA, 1936 WA.No.1279 of 2014 IN WP(C).28104/2008 ----- AGAINST THE

ORDER

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JUDGMENT

IN WP(C) 28104/2008 of HIGH COURT OF KERALA DATED 03/06/2014
APPELLANTS : RESPONDENTS 1 TO 4: ----- 1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF FOREST & WILD LIFE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT, DEPARTMENT OF REVENUE (TAXES), GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
3. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (ASSESSMENT), SPECIAL CIRCLE- II, KOZHIKODE.
4. THE DIVISIONAL FOREST OFFICER, KOZHIKODE DIVISION, KOZHIKODE.
5. THE DIVISIONAL FOREST OFFICER, MANNARKKAD.
6. THE DIVISIONAL FOREST OFFICER, SOCIAL FORESTRY DIVISION, PALAKKAD.
7. THE DEPUTY CONSERVATOR OF FOREST & WILD LIFE WARDEN, SULTHAN BATHERY, WAYANAD DISTRICT.
8. THE DIVISIONAL FOREST OFFICER, ACHENKOVIL.
9. THE DIVISIONAL FOREST OFFICER, NILAMBUR. WA.No.1279 of 2014 IN WP(C).28104/2008 10. THE WILD LIFE WARDEN, PARAMBIKULAM WILD LIFE DIVISION, AANAPADI, THOONAKADVU.P.O., PARAMBIKULAM, PALAKKAD DISTRICT. BY SR.GOVERNMENT PLEADER SRI.SUDHEESH KUMAR RESPONDENT : PETITIONER :- ----- V. MAMMU, S/O.AHAMMED KUTTY, PROPRIETOR, NATIONAL TIMBER TRADERS, KODAMPUZHA ROAD, FEROKE, KOZHIKODE DISTRICT. BY SRI.BABU JOSEPH KURUVATHAZHA THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 2609-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

----- W.A.No.1279 of 2014
----- Dated this the 26th day of
September, 2014

JUDGMENT

ANTONY DOMINIC, J.

This appeal is filed by the respondents in W.P.(C). No.28104 of 2008, with a prayer to direct the 3rd and 4th respondents in the Writ Petition to refund taxes illegally collected from him. He also sought direction requiring the aforesaid respondents to consider and dispose of Exts.P17 and P18 representations. By judgment dated 3rd June, 2014 the learned Single Judge directed the appellants/respondents 3 and 4 in the Writ Petition to consider the representations made by the petitioner/respondent for re-fund of the taxes collected. However, while doing so, referring to Ext.P6 in the Writ Petition, the judgment in W.P.(C)No.2877 of 2014, the learned Single Judge observed that as directed therein the Government is bound to refund the amount collected from the respondent. It is aggrieved by this observation in the judgment, the appeal is filed. W.A.No.1279 of 2014 2 2. We heard the learned Government Pleader appearing for the appellants and also the learned counsel appearing for the respondent.

3. As we have already stated the learned Single Judge has disposed of the Writ Petition directing appellants 3 and 4 to consider the claim of the respondent for refund. When the whole issue is thus left to be considered by the appellants 3 and 4, it was unnecessary for the learned Single Judge to have made any pronouncement on the entitlement of the respondents for refund of the tax as claimed by him. Further we also find that in Ext.P6 judgment mentioned above, there is no finding upholding his entitlement for refund, which is now claimed by the respondent. In such circumstances, we are inclined to delete the finding in the impugned judgment, that the appellants are bound to refund the taxes collected from the respondent.

4. Accordingly this appeal is disposed of deleting the finding in the judgment of the learned Single Judge that as directed in Ext.P6 judgment, the Government is bound to W.A.No.1279 of 2014 3 refund the tax collected from the respondent. This Writ Appeal is therefore disposed of, directing that the claim for refund made by the respondent shall be considered by appellants 3 and 4 as directed by the learned Single Judge. A final decision in this matter shall be taken, at any rate, within two months from the date of receipt of a copy of this judgment. ANTONY DOMINIC, JUDGE ANIL K.NARENDRAN, JUDGE skj True copy P.A to Judge