U.Manikandan vs the Assistant Commissioner, Palakkad

U.Manikandan vs the Assistant Commissioner, Palakkad

SooperKanoon Citation : sooperkanoon.com/1308655

Court : Kerala

Decided On : Mar-13-2024

Judge : Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : WP(C)/35995/2015

Appellant : U.Manikandan

Respondent : The Assistant Commissioner, Palakkad

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN WEDNESDAY, THE 13TH DAY OF MARCH 2024 / 23RD PHALGUNA, 1945 WP(C) NO. 35995 OF 2015 PETITIONER: U.MANIKANDAN AGED 31 YEARS M/S.MANI POULTRY FARM, ANAMOOLI, THENKARA.P.O., MANNARKKAD, PALAKKAD-678 761. BY ADVS. SRI.HARISANKAR V. MENON SMT.MEERA V.MENON RESPONDENTS: 1 THE ASSISTANT COMMISSIONER, PALAKKAD COMMERCIAL TAXES SPECIAL CIRCLE, PALAKKAD- 678 001. 2 THE INTELLIGENCE OFFICER IB DEPARTMENT OF COMMERCIAL TAXES, MATTANCHERRY AT MINI CIVIL STATION, ALUVA- 683 101. BY ADVS. GOVERNMENT PLEADER OTHER PRESENT: SRI. ARUN

AJAY SHANKER -GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :-2-:

J U D G M E N T

The writ petition is filed with the following prayers:- a)to quash Ext.P6 order issued by the 2nd respondent by the issue of a writ of certiorari or such other writ or order or direction;

2. The brief facts of the case are as

follows:- The petitioner is engaged in the trading of day old live broilers, poultry medicines etc. While so, summons was issued by the respondent calling upon the petitioner to produce the books of accounts for the year 2008-09, evidenced by Ext.P2. Subsequently, Ext.P3 notice under Section 67 of the Kerala Value Added Tax Act (for short 'the KVAT Act') was issued to the petitioner. According to the second respondent, seven instances of unaccounted sales were detected on cross verification of books of accounts for 2009-10 with an executive diary obtained from the premises of Sri.Rajan, Sales Tax Practitioner, Koduvayur. The petitioner filed reply letters :-3-: [Exts.P4 and P4(a)] stating that he had no connection with Sri.Rajan from whom the executive diary is seized, books of accounts for 2009-10 are not at all verified by the second respondent and the books of accounts 2008-09 are verified during 2010. But without considering any of the objections filed by the petitioner, the second respondent passed Ext.P6 penalty order. Aggrieved by Ext.P6, the petitioner has approached this Court.

3. An additional statement has been filed by the second respondent, as per the direction of this Court on 17.01.2024. In the additional statement, it is stated in paragraph 4 and 5 as follows:-

4. Upon scrutinising the penalty orders issued to the petitioner herein, it is found that certain transactions relied on in the penalty order of the petitioner is similar to the transactions which had resulted in penalty orders as against Sri.Manikandan. Who is another assessee who is engaged in Poultry business.

On the basis of the additional statement dated 25.1.2024 filed by the second respondent, I am of the :-4-: opinion that Ext.P6 order has to be set aside and a direction is to be given to the assessing Officer to reconsider the case. Accordingly, the writ petition is disposed of with the following directions:- i)Ext.P6 order is set aside. ii)The second respondent is directed to reconsider the matter taking into account the additional statement dated 25.01.2024, filed, by the second respondent, in accordance with law with notice to the petitioner and also after affording an opportunity of being heard to the petitioner within a period of three months from the date of receipt of a copy of this

judgment.

Sd/- SHOBA ANNAMMA EAPEN, JUDGE MBS/ :-5-: APPENDIX OF WP(C) 35995/2015 PETITIONER'S EXHIBITS:-

> P1- COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE 1ST RESPONDENT. P2- COPY OF SUMMONS ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 24.01.2009. P2(A)- COPY OF RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 20.01.2010. P3- COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT DATED 17.01.2014. P4- COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 08.03.2014. P4(A)- COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 11.03.2014. P5- COPY OF STATEMENT OF SRI.RAJAN, TAX PRACTITIONER, KODUVAYUR DATED 25.03.2014. P6- COPY OF ORDER PASSED BY THE 2ND RESPONDENT DATED 20.07.2015. P7- COPY OF CHECK NOTE OF THE 2ND RESPONDENT. P8- COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DATED 16.01.2015.