

Gracy Thomas vs the Intelligence Officer

Gracy Thomas vs the Intelligence Officer

SooperKanoon Citation : sooperkanoon.com/1357692

Court : Kerala

Decided On : May-25-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : WP(C)/14613/2023

Appellant : Gracy Thomas

Respondent : The Intelligence Officer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY,
THE 25TH DAY OF MAY 2023 / 4TH JYASHTA, 1945 WP(C) NO.
14613 OF 2023 PETITIONER: GRACY THOMAS PROPRIETRIX, M/S
GRACE POULTRY FARM KOMBODINJAMAKKAL, THRISSUR, PIN -
689607 BY ADVS. K.MANOJ CHANDRAN K.SRIKUMAR (SR.)
P.R.AJITH KUMAR AMMU CHARLES S.A.MANSOOR (PATTANAM)
RESPONDENTS:

1 THE INTELLIGENCE OFFICER INTELLIGENCE UNIT -I, STATE GST
DEPARTMENT POOTHOLE, THRISSUR, PIN - 680002 2 THE
ASSISTANT COMMISSIONER (ASSMT) SPECIAL CIRCLE,

THRISSUR, PIN - 680001 3 THE JOINT COMMISSIONER OF STATE TAX STATE GST DEPARTMENT, POOTHOLE, THRISSUR, PIN - 4 THE COMMISSIONER OF TAXES STATE GST DEPARTMENT, TAX BHAVAN, KARAMANA, THIRUVANANTHAPURAM, PIN - 695002 SR. GP. THUSHARA JAMES THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

25.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:- Dated this the 25th day of May,2023

JUDGMENT

The writ petition is filed, inter-alia, to quash Ext P3 notice issued by the first respondent.

2. The brief relevant facts leading to Ext P3 notice are: the petitioner is a registered dealer under the Kerala Value Added Tax Act, 2005(in short, Act).

She is engaged in poultry farming. The first respondent without any concrete finding had passed penalty orders against the petitioner under Section 67 of the Act. In an appeal preferred by the petitioner, the penalty orders were set aside by the First Appellate Authority, on the grounds that the Intelligence Officer has to conduct a proper enquiry and that the petitioner has to be afforded a proper opportunity to let in

evidence and cross-examine the witnesses. Although the matter was carried up in further appeal by -:3:- respondents, the Appellate Tribunal confirmed the impugned order by Ext P1 order, which in turn was further affirmed by this Court by Ext P2 common order. This Court, by Ext P2 order, remanded the matter to the first respondent for fresh consideration. Consequent to the remand, a few witnesses were cross-examined. Surprisingly, the petitioner is now served with Ext P3 proposal notice reproducing

verbatim the same contents

of the earlier pena

and the petitioner is directed to submit a reply within 48 hours. Even though the petitioner submitted Ext.P5

letter, requesting for further time to respond to Ext.

petitioner perceives that respondents are bent upon to -:4:- impose the penalty proposed in Ext.P3 notice. The action of the first respondent is in total disregard and in violation of the concurrent findings and directions of the appellate authorities and this Court. Ext P3 notice is ex-facie arbitrary, patently illegal and an abuse of process of law. Hence, the writ petition.

3. Heard; Sri. K.Srikumar, the learned Senior Counsel appearing for the petitioner and Smt. Thushara James, the learned Senior Government Pleader appearing for the respondents.

4. Indisputably, the penalty orders passed by the

first respondent were set aside by the First Appellate Authority and concurrently confirmed by the Appellate Tribunal and a Division Bench of this Court vide. Exts.P1 and P2 orders.

5. In Ext.P2 common order, this Court after upholding the findings of the appellate authorities that -:5:-

there was violation of the principles of natural justice, fair play and reasonableness, confirmed the order of remand and left open the contentions/objections of the parties.

6. It is consequent to three tiers of litigation and the open remand made by the Court, that the first respondent has now issued Ext.P3 proposal notice, directing the petitioner to submit the reply initially

within 48 hours and later extended to four days. Wh

concurrent findings that the revenue has suffered in an inter-party dispute, which is undoubtedly a continuation of the 'lis' on hand.

7. In the above conspectus, I am of the view, instead of quashing Ext.P3 proposal notice, in view of the open remand made by this Court in Ext.P2 order, -:6:-

Ext.P3 is to be read down and treated only as an interrogatory issued by the first respondent, only for the purpose of eliciting information from the petitioner and nothing more; otherwise it will be permitting the respondents with a veiled attempt to over-reach the orders of the appellate authorities and this Court, which cannot be permitted.

8. In the light of the above conclusion, I hold

that it would be up to the petitioner to furnish

further information from the first respondent, to give an effective reply, she would be at liberty to seek the

said information from the first respondent

-:7:- Exts.P1 and P2. Resultantly, I allow the writ petition in the following manner:

(i) Ext.P3 proposal notice is declared as an

interrogatory issued by the first respondent, only for the purpose of eliciting information from the petitioner. It would be up to the petitioner to either furnish the information or file an affidavit in response to Ext.P3.

(ii) In case the petitioner requires any information from the first respondent, for giving an effective reply to Ext.P3, the same shall be furnished by the first respondent. -:8:-

(iii) Needless to mention, the first respondent is directed to consider and dispose of the matter as directed by this Court in Ext.P2 common order.

Sd/- Sd/- C.S.DIAS,JUDGE DST/25.05.23 //True copy// P.A.To Judge -:9:-
APPENDIX PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE
COMMON ORDER OF THE KERALA VALUE ADDED TAX APPELLATE
TRIBUNAL, ERNAKULAM DATED 29-05-2015 EXHIBIT P2 TRUE COPY OF THE

COMMON ORDER OF HIGH COURT OF KERALA DATED 15-11-2021 IN
O.T.REV.

EXHIBIT P3 TRUE COPY OF THE SAID PROPOSAL NOTICE DATED

RESPONDENT EXHIBIT P6 TRUE COPY OF THE LETTER DATED 13-04-2023
SENT BY THE 1ST RESPONDENT TO THE PETITIONER EXHIBIT P7 TRUE
COPY OF THE LETTER SENT BY THE PETITIONER TO THE 1ST
RESPONDENT DATED 22.04.2023 EXHIBIT P8 TRUE COPY OF THE LETTER
FORWARDED BY THE PETITIONER TO THE 1ST RESPONDENT ALONG
WITH THE WITNESS LIST FOR THE REQUEST FOR EXAMINATION DATED
27.04.2023 RESPONDENTS EXHIBITS: NIL

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com