

Kerala High Court

Ms. Majeed Associates vs Commercial Tax Officer on 3 September, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 27421 of 2010(C)

1. MS. MAJEED ASSOCIATES,
... Petitioner

Vs

1. COMMERCIAL TAX OFFICER,
... Respondent

2. DEPUTY COMMISSIONER (APPEALS),

3. KERALA VAT APPELLATE TRIBUNAL,

4. INSPG. ASST. COMMISSIONER,

For Petitioner :SRI.P.RAGHUNATH

For Respondent : No Appearance

The Hon'ble MR. Justice C.K.ABDUL REHIM

Dated :03/09/2010

O R D E R

C.K.ABDUL REHIM, J.

W.P.(C).No.27421 of 2010

Dated this the 3rd day of September, 2010

J U D G M E N T

With respect to the period from April 2008 to August 2008, assessment was completed against the petitioner as per Ext.P1 order. It was confirmed in appeal as evidenced from Ext.P2. Against the appellate order, the petitioner had filed further appeal before the 3rd respondent Tribunal, as per Ext.P3. A stay petition as per Ext.P4 was also filed along with the appeal. It is submitted that the Tribunal has not yet considered either the appeal or the stay application. Grievance of the petitioner is that recovery steps are now being proceeded against for realising the amount of tax in dispute, without considering pendency of the second appeal. Hence the petitioner seeks direction to keep in abeyance the recovery steps till the disposal of the appeal.

2. It is submitted that the only dispute in the appeal pertains to the rate of tax applicable for the products, "Ujala Supreme" and "Ujala Stiff & Shine" dealt with by the W.P.(C).27421/10 -2-

petitioner. It is further submitted that the question is pending decision in various other appeals filed by the manufacturer as well as dealers, awaiting decision on the issue from the Hon'ble Supreme Court. It is pointed out that this court had granted stay in many other cases, against recovery of the tax amounts, pending disposal of such appeals on condition of payment of 1/3rd of the amounts in dispute. Hence I am of the opinion that a similar relief can be granted in this case also.

3. In the result the 3rd respondent Tribunal is directed to consider and dispose of Ext.P3 appeal, after affording an opportunity of hearing to the petitioner, as early as possible. Realisation of amounts covered under Ext.P1 assessment which stands confirmed in Ext.P2 appellate order shall be kept in abeyance, on condition of the petitioner remitting 1/3rd of the tax amount in dispute and also on furnishing security for the balance amount, within three weeks from today.

4. Ext.P5 is an order of penalty issued under Section 67 (2) of the KVAT Act. An appeal filed by the petitioner against Ext.P5 before the 2nd respondent was stated to be heard on 18.5.2010, and orders thereon is awaited. But, grievance of the petitioner is that now recovery steps are being pursued without considering pendency of the appeal. It is further submitted that W.P.(C).27421/10 -3-

the appeal was heard in full and that the petitioner is not insisting for any further hearing. Therefore a direction is sought for to keep in abeyance recovery steps till orders are passed on the appeal.

5. Having considered facts and circumstances I am of the opinion that the 2nd respondent can be directed to pass orders on the appeal filed against Ext.P5, and till then the recovery can be stayed.

Under the above circumstances the 2nd respondent is directed to pass orders on Ext.P6 appeal, at the earliest, at any rate within a period of one month from the date of receipt of a copy of this judgment. Respondents are directed to keep in abeyance realisation of amounts covered under Ext.P5 till such time.

C.K.ABDUL REHIM, JUDGE.

okb