

(1986) 10 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 6617 of 1986

Abdul Sathar

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 15-10-1986

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 265

Citation : (1987) 64 STC 441

Hon'ble Judges : M. Fathima Beevi, J

Bench : Single Bench

Advocate : P.A. Mohammed T, Johnson P. John and M.A. Mohammed Ashraf, for the Appellant; T. Karunakaran Nambiar, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Fathima Beevi, J.—The petitioner has been assessed to sales tax for the assessment year 1981-82, both under the Kerala General Sales Tax Act and the Central Sales Tax Act. Exhibits P18 and P19 are the assessment orders. The petitioner seeks to have exhibits P18 and P19 quashed on various grounds contending, inter alia, that the assessment proceedings violate the petitioner's fundamental right under Article 19(1)(g) of the Constitution of India. The main ground taken up is that there had been originally an assessment on the proprietor of the concern "Aries Spices" and the present assessment has been made on the premises that the business is a joint venture by three persons including the petitioner and such assessment amounts to double taxation and is without the authority of law. It has not been specifically alleged how the proceedings infringe the fundamental rights of the petitioner.

2. Shri Karunakaran Nambiar, Special Government Pleader (Taxes), has taken notice on behalf of the respondents. It is submitted that the petitioner, if aggrieved by the orders of assessment, has a statutory remedy to assail the same on all the grounds that have been urged in this petition and the existence of the alternative remedy would disentitle the petitioner to any relief in this writ

petition. Learned counsel also referred to recent decisions of the Supreme Court in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, and *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, . Learned counsel for the petitioner has relied on the earlier decision of the Supreme Court in *Beharilal Shyamsunder Vs. Sales Tax Officer, Cui Circle, Cuttack and Another*, as also the decision of this Court in *Appukutty v. Sales Tax Officer Kozhikode* [1966] 17 STC 380.

3. The Supreme Court has said in *Beharilal Shyamsunder Vs. Sales Tax Officer, Cui Circle, Cuttack and Another*, thus :

Where a petition was filed in the High Court under Article 226 of the Constitution of India to have an assessment order quashed on the ground that the imposition of sales tax was without authority of law or ultra vires the Sales Tax Act and the Rules, the High Court should not dismiss it on the ground that the petitioner should exhaust his internal remedies under the Act, since the authorities constituted under the Act could not decide such a question.

This decision has no application on the facts of the present case where the petitioner could raise the grounds taken up even before the statutory authority.

4. It has been stated in *M. Appukutty Vs. Sales Tax Officer, Spl. Circle I, Kozhikode*, that the existence of an alternative remedy is not an absolute bar to the issue of a writ of certiorari when there has been violation of the principles of natural justice and infringement of fundamental rights and the remedy available by way of appeal to the appellate authority and then by way of second appeal to the Tribunal and then by a revision to the High Court is not adequate where an assessee is compelled in the meantime to pay the tax imposed on him by an arbitrary assessment which has been solely guided by the whim and fancy of the assessing authority.

5. Relying on this decision the learned counsel maintained that when sales tax is imposed illegally in an arbitrary and capricious manner there is an infringement of the fundamental right of an assessee to carry on his trade or business. In *Appukutty's case* [1966] 17 STC 380 (SC) it was also observed thus :

Although quasi-judicial authorities have jurisdiction to decide rightly as well as wrongly, no judicial or quasi-judicial authority has the right to decide in an arbitrary manner and if it so decides, the High Court should safeguard the interest of the victim of such decision by interfering under Article 226 of the Constitution. Further, in such cases, Article 265 of the Constitution is also violated, inasmuch as there is no collection of tax by the authority of law when assessments are made in an arbitrary fashion.

6. These decisions are of no assistance to the petitioner, because in the light of the later pronouncements of the Supreme Court in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, and *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, where a

right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. In *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, the Supreme Court said thus :

Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under Sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under Sub-section (3) of Section 23 of the Act and then ask for a case to be stated upon a question of law for the opinion of the High Court u/s 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution.

That was a case in which the assessment had been made under the Orissa Sales Tax Act, 1947. The position has been reiterated in *Dunlop India Ltd.*'s case 58 Comp Cas 145 (SC) thus:

Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance, where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

7. The petitioner herein has the right to challenge the assessments before the appellate authority u/s 34 of the Kerala General Sales Tax Act and a second appeal is provided u/s 39 of the Act. Against the order of the Tribunal the assessee can also file a revision u/s 41 of the Act to the High Court. When such alternative remedy is available to the assessee, the petitioner is not entitled at this stage to the reliefs prayed for in the writ petition.

The original petition is dismissed.

Issue photo copy of the judgment on usual terms.