

(2000) 02 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 11486 of 1998

ALCATEL Modi Network System Limited	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Bihar Finance Act, 1981 — Section 17(5), 45

Citation : (2000) 2 PLJR 295

Hon'ble Judges : Ravi S. Dhavan, C.J.;Aftab Alam, J

Bench : Division Bench

Advocate : L.K. Bajla, P.S. Sarin, Anil Choudhary and Pravin Kumar Sinha, for the Appellant; V.N. Sinha and Ajatshatru for State, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J. and Aftab Alam, J.—This petition has been filed by M/s. Alcatel Modi Network Systems Ltd. Gurgaon (Haryana) impugning the order of assessment, Assessment Year 1998-99. This order of assessment had been passed under the Bihar Finance Act, under Sub-section (5) of Section 17 of the Act.

2. The Petitioner manufactures telephone equipments. There is no issue that certain consignments became the subject matter of sale to the Telephone Exchange site Hajipur, Bihar. On this was born an issue whether the assessment could be done under the Bihar Finance Act, 1981 or the Central Sales Tax Act, 1956.

3. The contention of the Petitioner is that the assessment order as has been made is incorrect and without jurisdiction as there has been no sale so as to attract a notice upon it and the question of an assessment does not arise.

4. The Court is not inclined to make any comment on the issues as on record an aspect that there was a consignment, invoice and transport of goods from Gurgaon (Haryana) into the State of Bihar and the delivery was to be made at a

site in Bihar and the sale was to be effected within this State are aspects noticed in the assessment order itself. May be, the contention of the Petitioner that the assessment is not called for and at best if there be an assessment, it could be under the Central Sales Tax Act, 1956, is a submission to be considered by an assessment authority, on the facts of the case.

5. In so far as this plea is concerned, the Petitioner has filed a petition in the High Court's prerogative writ jurisdiction. An objection has been taken in the counter affidavit, already, that if the assessment order be illegal, there is a clear cut recourse to an alternate remedy by way of an appeal u/s 45 of the Act available to the Petitioner. On this proposition, it was vehemently argued that once the petition had been accepted at the admission stage, the Respondents are barred from raising a plea of alternate remedy and challenging the merits of the contention raised in the petition and the assessment order does not hold and stands negatived as the jurisdiction is of the authority under the Central Sales Tax Act, 1956. The Court is not inclined to accept this suggestion that the Respondents may not raise the plea of alternate remedy. Such a plea may be taken at any time as it is a plea of jurisdiction in itself which goes to the root of the matter.

6. Besides, at the High Court for a matter to be heard leave has to be sought unless it is an appeal by right. On a certiorari action the High Court has to certify a case, good for hearing; there are no short cuts to admission.

7. It is well known that a writ jurisdiction of the High Court is not available in generality when the Statute itself has provided an alternate remedy of an appeal. May be, the provision which be the alternate remedy from the business point of view may be irksome and the present Assessee may be required to deposit an amount, 20 per cent, before filing the appeal. But, the legislature has structured the Statute, thus. The Petitioner may take recourse to an appeal u/s 45 of the Act and may contend whatever he contends before appellate authority. The Petitioner is relegated to take recourse to an alternate remedy u/s 45 of the Act.

8. In the circumstances, without commenting on the merit of the situation, this Court finds that the writ petition is misplaced. It is accordingly dismissed.