(2014) 04 AHC CK 0015

In the Allahabad High Court

Case No : Writ Tax No. 272 of 2014

Allanasons Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 6, 6A
Constitution of India, 1950 — Article 226

Citation : (2014) 76 VST 552

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Dilip Gupta, J

Bench : Division Bench

Advocate : Rahul Agarwal and Bharatji Agarwal, Advocates for the Appellant

Judgement

1. An order of assessment for the year 2009-10 has been passed against the petitioner by the Deputy Commissioner, Commercial Taxes, Division 15, Ghaziabad on March 20, 2014. The order is subject to an appeal. The petitioner has moved these proceedings under article 226 of the Constitution seeking the following reliefs :

"(a) Declare section 6A of the Central Sales Tax Act, 1956, in so far as it deems stock transfers between the branch office and the head office of an entity (which are otherwise not sales) to be inter-State sales liable to tax under the Act only on account of unavailability of form F to be against the general scheme of the Central Sales Tax Act itself ultra vires the legislative competence of the Union of India.

(b) Issue a writ, order or direction in the nature of certiorari quashing the findings recorded in the order dated March 20, 2014 (annexure 1) for the assessment year 2009-10 (U.P.) and the consequential order dated March 20, 2014 (annexure 2) for the assessment year 2009-10 (Central) passed by respondent No. 4 treating the transaction of supply goods by the branch office of the petitioner at Sahibabad to its head office at Mumbai to be inter-State sale and not sale in the course of exports only on account of the refusal of

Maharashtra VAT authorities to supply forms F and the consequent inability of the petitioner to furnish the same to respondent No. 4.

(c) Issue a writ, order or direction in the nature of mandamus restraining the respondents from recovering Rs. 8,67,32,305 from the petitioner."

The petitioner had moved an earlier writ proceeding before this court when a notice to show-cause had been issued by the Deputy Commissioner, Commercial Taxes, for the assessment year 2009-10. The petitioner, at that stage, sought an order restraining the assessing officer from deeming those sales in the course of export which are duly covered by form H between its branch office at Sahibabad and head office at Mumbai to be inter-State sales only on the ground of refusal of the Maharashtra VAT authorities to issue form F in respect of the transactions. The provisions of section 6A of the Central Sales Tax Act, 1956 were also sought to be challenged.

2. By a judgment and order dated March 31, 2014, the Division Bench held that the petition was premature and left it open to the petitioner to raise all its submissions before the assessing officer. At that stage, it may also be noted that the court had adverted to the submission of the petitioner based on the decision of the Supreme Court in Ambica Steels Ltd. Vs. State of U.P. and Others, where it had been held as follows (page 358 in 24 VST) :

"We are informed that certain State(s) within whose jurisdiction the transferee is located is/are not issuing F forms. In such an eventuality it would be open to the assessing officer to complete reassessment proceedings on its own merits after examining the transaction between the parties, keeping in mind the circumstance that the assessee is not in a position to obtain the F form, for no fault of his."

3. During the course of the judgment, the Division Bench also adverted to the decision of the Supreme Court in Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, in which the deeming fiction of section 6A had been considered with the following observations (paras 57 and 58, page 508 in 134 STC) :

"74. Section 6A of the Act although provides for a burden of proof, the same has to be read in the context of section 6 of the said Act. Section 6 provides for liability to pay tax on inter-State sales. Any transaction which does not fall within the definition of ''sale'' would not be exigible to tax, the burden whereof would evidently be on the assessee. We have noticed hereinbefore that whereas prior to the amendment in sub-section (1) of section 6A the dealer had an option of filing a declaration in form F; after such amendment, he does not have such option, insofar as in terms of the amended provision, if the dealer fails and/or neglects to file such a declaration, the transaction would be deemed to be an inter-State sale. It is to be noticed that for the aforementioned purpose also, Parliament advisedly used the expression ''deemed''. If the expression ''deemed'' is interpreted differently, an incongruity would ensue.

75. In absence of any indication that Parliament while enacting sub-section (2) of

section 6A did not intend to make the deeming provisions to be a conclusive fact as regards occasion of the transaction having taken place otherwise than as a result of sale, it would have dealt with the matter differently."

4. After the petitioner was relegated to appear before the Deputy Commissioner, Commercial Taxes and the earlier petition was disposed of on 31 March 2014, an order of assessment has been passed. The petitioner now seeks a writ of certiorari quashing the binding contained in the order dated March 20, 2014 of the assessing officer treating the transaction of the supply of goods by the branch office at Sahibabad to its head office at Mumbai to be an inter-State sale and not a sale in the course of exports only on account of the refusal of Maharashtra VAT authorities to supply form F. According to the petitioner, in view of the judgment of the Division Bench of this court in A.C.P.L. Jewels Private Ltd. Vs. Union of India (UOI) and Others, a direction may be issued by this court, setting aside the order of assessment and permitting the petitioner to move the assessing authority afresh so that the transaction in question can be considered on merits, bearing in mind that the petitioner has been unable to obtain form F on account of the refusal of Maharashtra VAT authorities to supply form F.

5. We are not inclined to entertain the petition, which is essentially against the order which has been passed by the assessing officer. Undoubtedly, the constitutional validity of section 6A of the Act cannot be considered or decided in a departmental appeal. A challenge to constitutional validity can be resolved in writ proceedings, but it is equally well settled that a challenge to constitutional validity should not be considered in a vacuum, particularly in a matter where the fiscal legislation provides a hierarchy of departmental remedies. The ordinary rule of prudence would warrant relegating the assessee to a departmental remedy first. The court should address an issue of constitutional validity only when it is necessary to do so. As the submission of the petitioner before the court would indicate, the grievance of the petitioner would be met if this court were to set aside the order of assessment and issue a direction to the assessing authority of the nature that we have adverted to above. Surely such relief can be sought before the appellate authority. The appellate authority would be within its jurisdiction in considering the judgment of a Division Bench of this court in A.C.P.L. Jewels Private Ltd. Vs. Union of India (UOI) and Others, and determining whether the dictum which has been laid down there would apply to the facts of the case. Consequently, at this stage in the considered exercise of our discretionary jurisdiction, we are of the view that it would not be appropriate or proper for the court to entertain the petition. We relegate the petitioner to the remedy of an appeal against the order of assessment.

6. However, we have not expressed any opinion on merits and clarify that in the view which we have taken, it is not necessary or proper to address the constitutional issue at this stage but if becomes necessary for the court to do so, the issue can be dealt with subsequently after the departmental remedies are exhausted. The petitioner would be at liberty to apply before the appellate

authority for stay of the demand pending disposal of the appeal. However, in order to enable the petitioner to do so, we direct that for a period of one month from today, no coercive steps shall be taken against the petitioner for the enforcement of the demand. Within this period, the petitioner would be at liberty to move the appellate authority. The appellate authority shall apply its mind independently to the application for stay. The petition is, accordingly, disposed of.

