
(2013) 09 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20204 of 2013

Amrit Banaspati Company Limited

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 69 VST 451

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Judgement

Rajive Bhalla, J.—The petitioner prays for issuance of a writ of certiorari quashing show-cause notices, assessment order dated August 27, 2013 and tax demand notice dated August 27, 2013. At the very outset, counsel for the petitioner was confronted with section 62 of the Punjab Value Added Tax Act 2005 (hereinafter referred to as, "the VAT Act") that provides an efficacious and alternative remedy of appeal. In response, counsel for the petitioner submits that the mere fact that alternative remedy of appeal is available to the petitioner, does not prohibit this court from examining the correctness of the impugned order. The assessing officer has committed grave and serious errors of jurisdiction, and, therefore, the petitioner should not be relegated to its remedy of appeal. Counsel for the petitioner further submits that the petitioner has transferred the entire business of the company, along with its assets and employees to M/s. Bunge India Private Limited, by a comprehensive business transfer agreement dated December 21, 2011. The agreement envisages a "slump sale", as defined u/s 42(2)(c) of the income tax Act, 1961. The petitioner filed an income tax return disclosing capital gains, which has been accepted. The petitioner and the purchasing entity filed a joint declaration to the Sales Tax Department, furnishing intimation of the "slump sale". The assessing officer, however, issued show-cause notices to the petitioner and eventually, passed an assessment order levying tax and imposing a penalty at the rate of 200 per cent. It is further submitted that transfer of a going concern does not involve a "sale", as envisaged by the Punjab Value Added Tax Act, 2005 (hereinafter referred to as, "the VAT Act"). The assessing officer has

committed an error of jurisdiction by referring to provisions of the Act, that are not applicable and imposing penalty, that is not warranted. It is further submitted that controversy, in the present case, is squarely covered in favour of the petitioner, by a Full Bench judgment of the Andhra Pradesh High Court in Coromandal Fertilisers Limited, Sec''bad Vs. State of A.P. and others, , and various other judgments referred to by the petitioner before the assessing officer. The judgment has been ignored while passing the assessment order. It is, thus, argued that as the assessing officer has ignored all canons of law, the writ petition may be entertained. It is further prayed that in case the petitioner is to be relegated to his alternative remedy, the condition of pre-deposit with respect to penalty may be waived.

2. We have heard counsel for the petitioner, perused the paper-book, the impugned order and the show-cause notices.

3. Admittedly, the petitioner has an alternative remedy of filing an appeal, under the VAT Act. The petitioner's pleas, in essence, are that the impugned order is erroneous on facts, and in law. A due consideration of the arguments reveals that the impugned order may, at best, disclose an erroneous exercise of jurisdiction but does not disclose an assumption of jurisdiction where there is none. Where a statute confers an alternative remedy, power under article 226 of the Constitution may be exercised if the impugned order discloses an assumption of jurisdiction, where there is none. Where, however, the impugned order, prima facie, discloses an erroneous exercise of jurisdiction, the party aggrieved would be required to approach the appellate forum. The petitioner's case pertains to an erroneous exercise of jurisdiction, namely, exigibility to sales tax of "slump sale", applicability of the Full Bench judgment of the Andhra Pradesh High Court and legality of the penalty and, therefore, can be validly urged before the appellate forum. The petitioner has approached this court, as a precondition to the filing of an appeal is the requirement to pre-deposit a part of amount claimed by the Revenue. We are not inclined, to entertain the appeal merely because the petitioner is statutorily required to pre-deposit tax and penalty. In view of what has been stated hereinabove, the petition is dismissed by relegating the petitioner to its alternative remedy of filing an appeal, under the VAT Act. The time, if any, spent in pursuing the writ petition may be considered sympathetically, in case the appeal is barred by limitation.