(2011) 08 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No''s. 15675 and 28819 to 28949 of 2011

Bharat Sanchar Nigam Limited and Another	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Citation : (2013) 75 KarLJ 310

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : V. Narasimha Holla, for the Appellant; T.K. Vedamurthy, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—In these cases, the petitioners have called in question the validity of the order of reassessment dated 28-8-2009 at Annexure-J for the assessment year 2004-05 passed u/s 7(3) and 7(3-A) of the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 (for short, ''the Act''). It is not in dispute that the said order is appealable u/s 16 of the Act. It is well-established that though the jurisdiction of the High Court under Article 226 of the Constitution is extensive, normally the High Court does not exercise that jurisdiction by entertaining petitions against the order of taxing authorities when the statute under which the tax is sought to be levied provides the remedy by way of an appeal thereby by passing the statutory machinery. The High Court leaves it to the taxpayer to obtain adjudication from the taxing authorities in the first instance. There is no reason why this Court should entertain these writ petitions when the Act contains a detailed mechanism for the redressal of the grievances of the petitioners especially when the matter involves public money. The Apex Court in United Bank of India Vs. Satyawati Tondon and Others, has emphasised the need for circumspection, caution and care by the High Courts to ensure that statutory schemes are not defeated by exercise of writ jurisdiction. It has been held thus:

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

2. It is also well-settled that the mere fact that an assessee has to deposit the amount of tax while filing an appeal cannot be said to be a good ground to bypass the remedy provided under the Act. There must be something more in a case to warrant the entertainment of a petition under Article 226, something going to the root of the jurisdiction of the taxing authority. In Sales Tax Officer, Jodhpur and Another Vs. Shiv Ratan G. Mohatta, the Apex Court has held that it is not the object of Article 226 to convert High Courts into original or Appellate Assessing Authorities whenever an assessee chooses to attack an assessment order on the ground that a sale was made in the course of import and, therefore, exempt from tax. The fact that the assessees have to deposit sales tax while filing an appeal is not a ground to bypass the statutory remedies. The relevant paragraphs of the decision is as follows.--

The facts that the assessees have to deposit sales tax, while filing an appeal, does not always mean he can bypass the remedies provided by the Sales Tax Act. To warrant the entertainment of a petition under Article 226, there must be something more in a case, something going to the root of the jurisdiction of the Sales Tax Officer, something which would show that it would be case of palpable injustice to the assessee to force him to adopt the remedies provided by the Act.

3. In Assistant Collector of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, the Apex Court after taking note

of the decision in Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, has held as under:

That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us, 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 by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters.

4. For the reasons stated above, I decline to entertain these writ petitions. They are accordingly dismissed. However, liberty is reserved to the petitioners to challenge the order impugned herein before the Appellate Authority in accordance with law. At this stage, learned Counsel appearing for the petitioners submits that the petitioners have already deposited 50% of the disputed tax for the assessment year 2004-05 as per the order passed by this Court in W.P. No. 29908 of 2009, disposed of on 9-3-2010 and that the said amount may be adjusted towards pre-deposit while filing the appeal. If the petitioners have already deposited 50% of the amount in terms of the order of this Court, the Appellate Authority shall take note of the same while entertaining the appeal. No costs.