(2014) 07 KAR CK 0042

In the Karnataka High Court

Case No : Writ Petition Nos. 30530 to 30535 of 2014 (T-RES)

Bowring Institute (Regd. Society) APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 79 KarLJ 606

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Anant V. Albal, Advocate for the Appellant; S.V. Girikumar, Additional Government Advocate, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

B.V. Nagarathna, J.—Petitioner has assailed assessment orders as well as demand notice issued by the respondent-authorities for the assessment years 2006-2007 upto 2011-2012. The petitioner is also aggrieved by the fact that a sum of Rs. 3,30,61,865/- has been recovered by the respondent-authorities, by directing the petitioner''s bankers to make available the said funds for the purpose of payment of its alleged tax dues. Admittedly, the aforesaid amounts are credited with the State Government. I have heard the learned Counsel for the petitioner and learned Additional Government Advocate for respondents 1 to 5 and perused the material on record.

2. During the course of submission, learned Additional Government Advocate stated that the petitioner has already filed appeals assailing the impugned assessment orders before the Joint Commissioner of Commercial Taxes and that the petitioner cannot avail of a dual remedy i.e., one before the Appellate Authority-respondent 2 and the other by way of a writ petition. He, therefore, contended that the petitioner may be relegated to the appellate remedy and that, this Court cannot interfere with the assessment orders or the demand notices.

3. While this submission was not countered by the learned Counsel for the petitioner, it was however, contended that during the pendency of those appeals before the Appellate Authority, the respondent-authorities have already recovered the taxes by way of coercive acts by resorting to recovery of funds from the fixed deposits standing in the name of the petitioner in the banks. He, therefore, contended that some protective directions be granted with regard to the amounts already recovered by the respondent-authorities, so that, in case the petitioner succeeds before the Appellate Authority, the petitioner must be entitled to the said amounts along with interest.

4. Having regard to the fact that the petitioner is pursuing its appeals before the Joint Commissioner of Commercial Taxes being aggrieved by the impugned assessment orders, at this stage, no interference can be made with those orders in these writ petitions. However, as the amounts allegedly due by the petitioner is already with the respondent-authorities i.e., a sum of Rs. 3,30,61,865/-, I am of the view that some protective orders must be made as regards that amount as, it is necessary to ensure that the petitioner receives the aforesaid amount with interest, in case the petitioner is successful before the Appellate Authority. In that view of the matter, it is ordered that in case the petitioner succeeds in the appeals filed by it before the Appellate Authority, then in that case, respondents are directed to return the aforesaid amounts along with the applicable bank rate of interest computed from 21-5-2014 on which date, the amounts were recovered from the petitioner till the date of repayment. With the aforesaid observations and directions, these writ petitions stand disposed.

All contentions on both sides are left open.

