

(2016) 07 MEG CK 0001
In the Meghalaya High Court
Case No : WP (C) No. 310 of 2015

C.M.J. Foundation

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 143(3)

Citation : (2016) 5 NEJ 328

Hon'ble Judges : Mr. Dinesh Maheshwari, CJ. and Mr. Ved Prakash Vaish, J.

Bench : Division Bench

Advocate : Mr. S.P. Sharma, Advocate, for the Petitioner; Mr. N. Mozika, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Dinesh Maheshwari, C.J.(Oral) - Having heard the learned counsel for the petitioner and having perused the material placed on record, we are unable to find any ground or reason to entertain this writ petition.

2. Put in a nutshell, the sum and substance of the matter is that by way of this writ petition, the petitioner seeks to question the demand notice No. AAATC6117A/ACIT/CIR/SHG/2014-2015/497 dated 09.11.2015 (Annexure-V) and demand notice No. AAATC6117A/ACIT/CIR/SHG/2014-2015/1532 dated 19.11.2015 (Annexure-VII), as issued by the respondent No.5-Assistant Commissioner of Income Tax, Shillong for recovery of the dues pursuant to the Assessment Order under Section 143 (3) of the Income Tax Act, 1961 dated 31.03.2015 (Annexure-I), as passed in relation to the petitioner-Institution for the Assessment year 2012-2013.

3. It appears that the remaining outstanding amount under the said Assessment Order is to the tune of Rs.710.89 lakhs against the petitioner; and the Assistant Commissioner of Income Tax, Shillong, by his notice dated 09.11.2015, called upon the petitioner to make payment thereof within a fortnight while stating that

upon petitioner's failure to do so, appropriate proceedings shall be initiated. The petitioner responded to the said notice by its communication dated 10.11.2015 (Annexure-VI) to the effect that an appeal had already been filed before the Commissioner of Income Tax (Appeals), Shillong against the aforesaid order dated 31.03.2015; and the demand be kept in abeyance until disposal of the appeal. It appears further that though there had not been any interim order in the appeal but, the Assistant Commissioner of Income Tax, by his subsequent communication dated 19.11.2015, called upon the petitioner to make payment of at least 50% of the total demand and reiterated the proposition of adopting appropriate proceedings upon its failure to do so.

4. Seeking to question the aforesaid demand notices, this writ petition was filed way back on 07.12.2015. This petition came up before a Division Bench of this Court on 11.12.2015, when it was ordered to be listed before another Bench. Thereafter, this petition remained pending and was listed only on 04.07.2016 before us when a request for adjournment was made on the ground that the arguing counsel for the petitioner was not available in town. Thereafter, the petition has come up today.

5. It is rather surprising that although this writ petition has never been entertained and the respondents have never been called upon to answer, yet the respondents No.1 to 5 have chosen to file a detailed affidavit-in-opposition, seeking to justify the Assessment Order as also the demand notices in question.

6. Leaving the aforesaid uncalled for affidavit-in-opposition aside, we have queried the learned counsel for the petitioner that when an appeal has admittedly been filed, why the petitioner has not chosen to prosecute the remedy already taken recourse of and not sought the appropriate relief in the appellate forum in accordance with law. Only an uncertain response is forthcoming to our queries that the Commissioner of Appeals was not regularly sitting at Shillong. In this regard, it is informed by the counsel for the respondent-department that in fact, the appeal filed by the petitioner has already been posted for consideration on 10.08.2016. However, the learned counsel for the petitioner would refer to the orders of the Hon'ble Supreme Court in *Todi Industries Ltd. v. Union of India and others*: (1999) 9 SCC 230 and *ITC Limited and another v. Union of India and others*: (1998) 8 SCC 610 to submit that a limited protection may be extended to the petitioner until hearing of the appeal by the appellate authority. We are afraid, the cited orders do not make out a case in favour of the petitioner; and there is no reason to entertain this writ petition.

7. In the case of *Todi Industries Ltd.* (supra), after noticing that the question sought to be raised by the said petitioner, about recovery of customs duty pursuant to the order passed by the concerned Collector, was required to be taken to appeal under Section 128 of the Customs Act, 1962, the Hon'ble Supreme Court declined to entertain the petition under Article 136 of the Constitution of India; and while relegating the petitioner to the remedy of an appeal, also made it clear that the observations made by the High Court while

disposing of the writ petition will not come in the way of either side in merit consideration of the matter before the appellate authority. In the circumstances of the given case, where the time for filing the appeal had already expired, the Hon"ble Supreme Court granted six weeks" time to the said petitioner for filing an appeal and in view of the time so granted, the Supreme Court directed status quo over recovery to be maintained for seven weeks while leaving other aspects open for consideration of the appellate authority. In the present case, as noticed, the appeal had already been filed by the petitioner even before filing of this writ petition. Therefore, the said order passed by the Hon"ble Supreme Court in the given set of facts and circumstances hardly enures to the benefit of the present petitioner.

8. Further, the order passed in ITC Limited (supra), rather operates against the petitioner. In the said case, again, the time for filing of the appeal under Section 35 of the Central Excise Act, 1944 had expired for which, the Hon"ble Supreme Court, in the interest of justice, granted time to the said petitioner to file belated appeal within one month from the date of the order and it was agreed to on behalf of the Revenue that the merit consideration of the appeal would not be objected to. The Hon"ble Supreme Court also observed that the High Court, while dismissing the writ petition on the ground of alternative remedy, could not have intended to render concluded findings on the contentious points; and thus, made it clear that the observations of the High Court were tentative in nature, not precluding the said petitioner from raising all the points open to him in appeal. So far the prayer for stay was concerned, the Hon"ble Supreme Court did not pass any order in favour of the said petitioner and rather left it open for the said petitioner to move the stay application or an application for waiver of deposit while directing that such an application, if filed, would be dealt with by the Collector concerned in accordance with law. The Hon"ble Supreme Court, inter alia, observed as under:-

"3. The third difficulty pointed out by the petitioner is in regard to stay of the demand raised by the impugned order. We do not pass any order in this regard. It will be open to the petitioner to make a stay or an application for waiver of deposit of the duty demanded as a precondition for appeal before the Collector (Appeals). We direct that if such an application is filed, the Collector should deal with it and dispose of it in accordance with law."

9. The aforesaid directions and observations of the Hon"ble Supreme Court, if applied with relevant contextual variation to the present case, could only result in leaving it open for the petitioner to make appropriate prayer before the appellate authority in an appropriate manner and in accordance with law.

10. Even at the cost of the repetition, we cannot help reiterating that when the petitioner had already filed an appeal against the Assessment Order in question, any prayer against the demand arising from the impugned order of the Assessing Authority, ought to have been made only before the Appellate Authority concerned.

11. For what has been discussed herein above, we find no reason to entertain this writ petition.

12. Thus, in this matter, exercise of writ jurisdiction is declined; and this writ petition stands dismissed summarily.