(2009) 11 AHC CK 0053

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 1055 of 2009

Divisional Longging Manager, U.P. Forest Corpn.	APPELLANT
Vs	
Commissioner, Commercial Tax, U.P., Lucknow	RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Citation : (2011) 42 VST 120

Hon'ble Judges : Abhinava Upadhya, J

Bench : Single Bench

Judgement

Abhinava Upadhya, J.—Heard Sri Balwant Singh, learned counsel appearing for the revisionist and Sri B. K. Pandey, learned standing counsel appearing for the Department.

2. The present revision has been filed against the order of the Tribunal dated May 12, 2009 passed in Second Appeal No. 370 of 2002 relating to the assessment year 1988-1989.

3. The applicant which is U. P. Forest Corporation, Renukot, Sonbhadra is engaged in the business of sale of tendu leaves, baghai ghas, firewood, etc., purchased from the Forest Department of the Government.

4. The learned counsel appearing for the applicant submitted that the Trade Tax Department has been treating it to be a manufacturer of the aforesaid goods, whereas the purchases have been made from the Forest Department and, therefore, the Corporation cannot be treated as manufacturer. Further, it has been stated that upon a settlement arrived at between the Forest Corporation and the Trade Tax Department a consolidated amount of tax for a sum of Rs. 13 crores odd have already been deposited for the period October 1, 1983 to March 31, 1989 and therefore, for the aforesaid period no further tax can be demanded. The matter was carried up to the stage of Tribunal and the Tribunal has disallowed the claim against which present revision has been filed.

5. The learned standing counsel while justifying the order of the Tribunal has further stated that the present dispute is between one wing of the Government which is a corporation that is also a creation of the Government and therefore, in view of the decision of the Supreme Court in the case of Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, and in the case of Oil and Natural Gas Corporation Ltd. v. City and Industrial Development Corporation Maharashtra reported in [2007] 9 JT 382 wherein it has been held that such disputes must be referred to the Secretary Level High Powered Committee for redressal.

6. In the case of Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, the apex court has held that dispute between the Government Departments cannot be contested in courts. A Committee should be constituted consisting of the Chief Secretary, Secretary and Secretary of Law, etc., which will decide such disputes. Similar view has been taken by the Supreme Court in the case of Oil and Natural Gas Corporation Ltd. v. City and Industrial Development Corporation, Maharashtra [2007] 9 JT 382 and other Division Bench decisions of this court in the case of Pradeshiya Industrial and Investment Corporation, U. P., Limited v. Deputy Collector (Collections) Sales Tax reported in [1999] 116 STC 415 : (1994) UPTC 833 and Etah Gramin Bank, Etah v. Commissioner of income tax, Aligarh reported in Etah Gramin Bank Vs. Commissioner of Income Tax and Others,

7. The Supreme Court in the case of Mahanagar Telephone Nigam Ltd. v. Chairman, Central Board, Direct Taxes reported in Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another, has observed as follows (page 652 in 267 ITR) :

We have heard the parties.

Undoubtedly, the right to enforce a right in a court of law cannot be effaced. However, it must be remembered that courts are overburdened with a large number of cases. The majority of such cases pertains to Government Departments and/or public sector undertakings. As is stated in Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, it was not contemplated by the framers of the Constitution or the CPC that two departments of a State or Union of India and/or a department of the Government and a public sector undertakings fight a litigation in a court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in co-ordination and not confrontation. The mechanism set up by this court is not, as suggested by Mr. Andhyarujina, only to conciliate between Government Departments. It is also set up for purposes of ensuring that frivolous disputes do not come before courts without clearance from the High Powered Committee. If it can, the High Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a public sector undertaking. This could be prevented by the High Powered Committee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the Department/public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the Department/ public sector undertaking finds the decision unpalatable, discipline requires that they abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done.

8. In this view of the matter, the present case is also referred to the committee to be constituted as directed by the apex court, if not already functional and the said committee will look into the matter and redress the dispute raised in the present petition. It is further directed that until the decision by the aforesaid committee, recovery proceeding shall be kept in abeyance and the same shall be subject to the order that may be passed by the said committee.

9. In view of the observation made above, the present revision is disposed of.