(2008) 02 CAL CK 0019

In the Calcutta High Court

Case No : Writ Petition No. 2631 (W) of 2008

Durga Pada Sahoo APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32, 323A, 323B
West Bengal Taxation Tribunal Act, 1987 — Section 2, 7
West Bengal Value Added Tax Act, 2003 — Section 21, 5

Citation : (2008) 2 CHN 412

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Sadananda Ganguly, Soumen Kumar Dutta and Jayanta Dey, for the Appellant; Prosenjit Basu and Boudhayan Bhattacharya for respondent Nos. 2 to 4 and Seba Roy, for the Respondent

Final Decision : Dismissed

Judgement

Soumitra Pal, J.—Let affidavit-of-service filed in Court today be kept with the records.

2. In the writ petition the petitioner has challenged the action of the Commercial Tax Officer, Tamluk Charge Office, Purba Medinipur, the respondent No. 3 in refusing to issue ''C'' form subject to the payment of Value Added Tax under the West Bengal Value Added Tax Act, 2003 (''WBVAT Act'' for short) @ 4% as the goods are exempted from tax u/s 21 of the said Act.

3. Learned Advocate on behalf of the respondents submits that since WBVAT Act is a specified Act under the West Bengal Taxation Tribunal Act, 1987 the Taxation Tribunal has the jurisdiction to deal with the matter. It is argued that the High Court does not have the jurisdiction in view of the law laid down in L. Chandra Kumar Vs. Union of India and others, . The petitioner, if aggrieved, is at liberty to move before the Tribunal.

4. Learned Advocate for the petitioner submits that the High Court cannot be denuded of its power in view of the proposition of law laid down by the Apex Court in Surya Dev Rai Vs. Ram Chander Rai and Others, , since the jurisdiction conferred on the Supreme Court under Article 32 and the High Court under Articles 226 & 227 of the Constitution of India is a part of the basic structure of the Constitution. Further, on merit it is contended, since exemption has been claimed it cannot form part of levy, assessment and collection as postulated u/s 5 of the WBVAT Act. Moreover, concession granted u/s 21 cannot be made nugatory by Schedule CA of WBVAT Act. Therefore, a writ petition is maintainable even after the constitution of the Taxation Tribunal.

5. The question which falls for consideration is whether the High Court has the jurisdiction to deal with the matter as the goods are covered under a State Act specified in the Schedule to the West Bengal Taxation Tribunal Act, 1987.

6. In this context, it is appropriate to refer to the Long Title of the West Bengal Taxation Tribunal Act, 1987, as published in the Calcutta Gazette, which is as under:

An Act to provide for the setting up of a Taxation Tribunal and for the adjudication or trial by such Tribunal of any disputes, complaints or offences with respect to the matters relating to levy, assessment, collection and enforcement of any tax under any specified State Act in pursuance of Article 323B of the Constitution of India and for matters connected therewith or incidental thereto.

7. Sections 2(k),5 and 7 of the West Bengal Taxation Tribunal Act, 1987 are as under:

Section 2(k). ''Specified State Act'' means a State Act specified in the Schedule to this Act.

Section 5. The State Acts to which this Act shall apply.-This Act shall apply to every State Act specified in the Schedule to this Act with effect from the date on which such State Act is so specified, and the Tribunal. save as otherwise expressly provided under such State Act and subject to the other provisions of this Act, shall exercise jurisdiction, powers and authority in relation to all matters of adjudication or trial of any disputes. complaints or offences with respect to levy, assessment, collection and enforcement of any tax under any specified State Act and of matters connected therewith or incidental thereto, and no Court except the Supreme Court of India shall, with effect from such date exercise any jurisdication, powers or authority in the matter of adjudication or trial of any disputes, complaints or offences with respect to the aforesaid matters,

Section 6. Jurisdiction, powers and authority of the Tribunal.-(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise in respect of a State Act, with effect from the date on which such State Act is specified in the Schedule referred to in Section 5. all the jurisdiction, powers and authority exercisable immediately before that day by all Courts including the High Court but excluding the Supreme Court of India for adjudication or trial of disputes or complaints or offences with respect to all matters of levy, assessment, collection and enforcement of any tax under any specified State Act and matters connected therewith or incidental thereto:

Provided that where the matter relates of disposal to question of Constitutional validity of any provision of any specified State Act, the matter shall be decided by a Bench constituted of at least three Members of which the Chairman shall be one.

(2) ....

(emphasis supplied)

8. Admittedly the West Bengal Value Added Tax Act, 2003 is a State Act specified in the Schedule to the West Bengal Taxation Tribunal Act, 1987.

9. It is to be noted that Article 323B empowers the appropriate legislature to legislate relating to matters regarding levy, assessment and collection and enforcement of any tax. Consequently, the West Bengal Taxation Tribunal Act, 1987 has been enacted for setting up a Tribunal for the adjudication or trial of disputes or complaints or offences with respect to all matters of levy, assessment, collection and enforcement of any tax under any specified State Act and matters connected therewith or incidental thereto. Pursuant to such enactment, the West Bengal Taxation Tribunal has been set up. Therefore, the Taxation Tribunal has the jurisdiction to deal with the disputes arising out of matters relating to specified State Act. That the High Court has no jurisdiction to deal with the matter is evident from the observation of the Supreme Court in L. Chandra Kumar (supra) wherein it has been held ".... that all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution will be subject to the High Court''s writ jurisdiction under Article 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls" (paragraph 91). The Apex Court further held ".... that the Tribunals will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted...." (paragraph 93). Keeping Article 323B - the Constitutional provision, the provisions contained in West Bengal Taxation Tribunal Act, 1987 and the observation of the Supreme Court in L. Chandra Kumar (supra), I am of the view the High Court does not have the jurisdiction to deal with the matter. The Taxation Tribunal acts as the Court of first instance. The argument that the Tribunal has no power to deal with the matter regarding exemption or concession under the WBVAT Act is not tenable as during assessment the assessing officer has to consider and determine whether an item falls under the exempted category and, thus, it is a part of assessment. Hence, a claim for exemption is in connection with or incidental to assessment as envisaged under Sections 5 and 6 of the Act. The Constitutional framework and the legislative scheme cannot be ignored. In such background the principles of law laid down in the judgement of

the Apex Court in Surya Dev Rai (supra) are not applicable to the facts of the case.

10. Therefore, in my view, the West Bengal Taxation Tribunal is competent and has the jurisdiction to deal with matters relating to the West Bengal Value Added Tax Act, 2003 which is specified State Act and High Court has no jurisdiction to deal with the issue raised in the writ petition.

11. Accordingly, the writ petition is dismissed.

12. There will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the appearing parties on priority basis.

