
(1994) 05 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5459 of 1994

Eicher Goodearth Ltd.

APPELLANT

Vs

State of Haryana etc.

RESPONDENT

Date of Decision : 02-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana General Sales Tax Act, 1973 — Section 39(5)

Citation : (1994) 107 PLR 529

Hon'ble Judges : R.P. Sethi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Raja Ram Aggarwal, Sanjay Vij and P.A.S. Rao, for the Appellant;

Final Decision : Dismissed

Judgement

R.P. Sethi, J.—Heard the learned counsel for the petitioner.

2. The petitioner-company is a limited company in the name of M/s Eicher Goodearth limited and is having its unit called Eicher Research Centre at Ballabgarh in Faridabad district claims to be engaged in carrying on research work for Eicher Motors Ltd. and Eicher Tractors Ltd. for which it has been charging service charges for the service rendered in the form of research and development. The Company is stated to have entered into two agreements one with Eicher Motors Ltd. and the other with Eicher Tractors Ltd. for carrying on research work for the Company. In this petition, the main challenge is to the legality of Annexure P/17 on the ground of its being unjust and against the provisions of the law applicable in the case. In support of their case, the learned counsel for the petition-company has relied upon the judgment of, the Allahabad High Court in U. P. Lamination v. Union of India 1985(20) ELT (All), and Shivarayana Laduram v. The Assistant Commissioner of Commercial Taxes, Hyderabad [1967]19 STC 50 and E. Krishnappa Naicker v. The Deputy Commercial Tax Officer Tiruvannamalai [1963]14 STC 162.

3. From the facts alleged in the petition it transpires that the petitioner-company was assessed to sales tax by the assessing authority vide Annexure P/8 and P/11 against which an appeal, annexure P/16, has been filed which is still pending. The appellate authority vide Annexure P/17 impugned in this petition has, however, directed that in view of the circumstances of the case and the turn-over involved, the appeal is entertained subject to the payment of the tax amount only in two equal monthly instalments. The first instalment is to be paid within a period of one month from the issue of the order and the second within a month thereafter. It is submitted that the appellate authority should have considered the validity of the order impugned and prima-facie case of the petitioner before passing the order impugned. Section 39 of the Haryana General Sales Tax Act, 1973 provides a remedy of appeal from every original order including the order u/s 40 passed under the said Act or the rules framed thereunder. Section 39(5) provides that no appeal shall be entertained unless it is filed within sixty days from the date of the order appealed against and the appellate authority is satisfied that the amount of tax assessed, and the penalty and interest, if any recovered from the person, has been paid. However, vide proviso to Sub-section 5 it is provided that if the appellate authority is satisfied that the dealer is unable to pay the whole of the amount of tax assessed or the penalty imposed or the interest due, he may, if the amount of tax or interest admitted by the appellant to be due has been paid, for reasons to be recorded in writing entertain the appeal subject to the furnishing of a bank guarantee or adequate security for the payment of the amount finally determined to be due. The only exception for non payment of the tax assessed with penalty and interest is the inability of the appellant to pay the whole amount. The inability under the context of the proviso made mainly refers to the financial inability. Before preferring an appeal, the assessee is under a legal obligation to deposit the tax assessed unless he is exempted from doing so by the appellate authority by reasons to be recorded in writing. The petitioner in the instant case has not referred to any financial inability which prevented it from depositing the aforesaid amount. The settled proposition of law is that where an alternate remedy is provided, the High Court does not ordinarily interfere in exercise of its writ jurisdiction particularly in fiscal matters. The Act of 1973 provides a complete machinery to challenge the order of assessment alongwith adequate safeguards against the arbitrary or unjust assessment. In the instant case, the assessee has already availed of the remedy of appeal under the said Act and therefore, it cannot be permitted to invoke the jurisdiction of this Court under Article 226 of the Constitution of India merely for the purpose of obtaining the stay with the intention to avoid payment of tax. The Supreme Court in *Titaghur Paper Mills Co. Ltd. v. State of Orissa* (1983) 53 STC 215, has held that where a complete machinery to challenge the order, of assessment is prescribed, the High Court would not exercise its jurisdiction under Article 226 of the Constitution of India. The mere fact that the deposit of the tax would be harsh cannot be made a basis for challenging the order of the appellate authority in this Court, under Article 226 of the Constitution of India. Harshness cannot be equated either with discrimination or illegality. Once the legislature in

its wisdom has prescribed the mode of hearing an appeal, a party desirous of availing of the" remedy of appeal is bound to comply with the directions of the statute providing for such remedy. Right of appeal is not a fundamental right but is the creation of a statute. Remedy of appeal has, therefore, to be availed of strictly in accordance with the directions of the statute making a provision for filing of the appeal.

4. The Supreme Court in " Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , has held that in exercise of the writ jurisdiction interim orders should not be passed at the asking of the party. Relying upon Titaghur Paper Mill's case (supra) the Court held:

"....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. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

5. In Dunlop India's case (supra), the facts were that the said company which was manufacturing tyres, tubes and other rubber products has claimed benefit of exemption of excise duty to the tune of Rs. 6.05 crores for which they have filed a petition in the Calcutta High Court praying for restraining the Central Excise Authority from levy and collection of excise duty. The learned Single Judge and the Division Bench of that Court granted the stay and dealing with the argument as is raised before us regarding there being prima facie case in favour of the petitioner as also the balance of convenience in its favour, the Supreme Court held:

"...Even assuming that the Company had established a prima facie case, about which we do not express any opinion, we do not think that it was sufficient justification for granting the interim orders as was done by the High Court. There was no question of any balance of convenience being in favour of the respondent-Company. The balance of convenience was certainly in favour of the Government of India. Governments are not run on mere Bank Guarantees. We notice that very often some courts act as if furnishing a Bank Guarantee would meet the ends of justice. No governmental business or for that matter no business of any kind can be run on mere Bank Guarantees. Liquid cash is necessary for the running of a Government as indeed any other enterprise. We consider that where

matters of public revenue are concerned, it is of utmost importance to realise that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest...."

6. The reliance upon U.P. Lamination's case (supra) and Shivnarayana Laduram and E. Krishanappa Naicker's case (supra) is misplaced inasmuch as neither the Supreme Court had debarred the High Court from passing the interim orders in appropriate cases only. In those judgments, the High Court have not held that interim orders of stay should be passed as and when a petition is filed despite the fact that the appeal is pending before the competent authority.

7. The present petition does not involve any question of law nor does it alleges the violation of any fundamental right requiring our interference. The pleas on merit as raised by the learned counsel for the petitioner-company are sub-judice before the appellate authority. There is no merit in this petition which is accordingly dismissed in limine.