
(1994) 06 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 8667 of 1993-F

G. Sanjeevi

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 17-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 3 ILR (Ker) 437 : (1994) 95 STC 10

Hon'ble Judges : V.V. Kamat, J;K.T. Thomas, J;K. Narayana Kurup, J

Bench : Full Bench

Advocate : K.G. Balagangadharan, for the Appellant; V.C. James, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Narayana Kurup, J.—The petitioner is a registered dealer and an assessee to sales tax on the files of the second respondent, Additional Sales Tax Officer-II, 1st Circle, Palakkad, The challenge in this original petition is directed against exhibits P-4 and P-7 assessment orders passed by the second respondent rejecting the petitioner's claim for exemption of sugar-candy from sales tax under the provisions of the Kerala General Sales Tax Act, 1963. The petitioner has an effective alternative remedy of appeal under the Kerala General Sales Tax Act.

2. The learned single Judge doubted whether in a case where the assessee has a right of appeal against the orders impugned in the original petition, he is obliged to pursue the remedy provided by the statute and referred the original petition at the admission stage itself for consideration of that question by a Division Bench. The Division Bench in turn having regard to the "importance of the question on the practical side" referred the matter for adjudication by a Full Bench. The matter has come before us thus.

3. Heard learned counsel for the petitioner and learned Government Pleader

appearing for the Revenue.

4. The only question that arises for consideration is whether this Court can entertain a petition under Article 226 of the Constitution of India notwithstanding the fact that the petitioner has an equally efficacious adequate alternate remedy by way of appeal, etc., under the statute, namely, the Kerala General Sales Tax Act. Exhibits P-4 and P-7 are assessment orders passed by the second respondent rejecting the petitioner's claim for exemption in respect of sugar-candy as already noticed. According to the petitioner, sugar-candy and sugar are one and the same and accordingly he is entitled to exemption on the whole turnover of sugar-candy as per entry 5 of the Third Schedule to the Kerala General Sales Tax Act which reads :

"Sugar as defined in item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944."

The Central Act defines "sugar" as follows :

"Sugar means any form of sugar in which the sucrose content, expressed as percentage on the material dried to constant weight at 105°C would be more than ninety."

Whereas according to the Revenue, sugar and sugar-candy are entirely different commodities and the petitioner is not entitled to exemption.

5. The petitioner has an equally efficacious adequate alternative remedy by way of an appeal provided under the Kerala General Sales Tax Act. The normal rule is that the aggrieved party should be relegated to the statutory remedy and he should not be permitted to agitate the issue involved directly before the High Court under Article 226 of the Constitution. This rule of exhaustion of alternative remedy will be more strictly enforced in fiscal matters which involve revenue to the State. But that does not mean that the mere existence of alternative remedy is an absolute bar to the maintainability of a petition under Article 226 of the Constitution in all cases irrespective of factual matrix. There are situations in which despite the existence of alternative remedy this Court may grant relief in deserving cases since the rule of exhaustion of alternative remedy is only a rule of policy, convenience and discretion rather than a rule of law. That apart, it is not desirable to lay down a hard and fast rule that in all cases where alternative remedy exists judicial review by way of petition under Article 226 of the Constitution is shut out since judicial review is one of the basic features of the Constitution. In other words, whether a petition under Article 226 of the Constitution is entertainable or not despite the existence of alternative remedy may depend upon the facts of each case. It is a circumstance which the court has to take into consideration in exercising the extraordinary jurisdiction under Article 226 of the Constitution. Alternative remedy does not take away the jurisdiction of this Court to grant relief under Article 226.

6. The Supreme Court in the decision reported in *Titaghur Paper Mills Co. Ltd.*

and Another Vs. State of Orissa and Others, observed as follows :

"It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."

That case related to an assessment under the Orissa Sales Tax Act and the apex Court dismissed the petition as not maintainable in view of the right of appeal provided under the said Act.

7. The question again arose for consideration before the Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, where the assessee claimed exemption from excise duty based on a notification. The Revenue was of the view that the assessee is not entitled to exemption under the notification in question. The assessee claiming exemption to the tune of Rs. 6.5 crores filed a writ petition in the Calcutta High Court seeking an interim order restraining the authorities from the levy and collection of excise duty. By an interim order the learned single Judge allowed the benefit of exemption partially for which amount the assessee was directed to furnish a bank guarantee. On appeal the interim order was confirmed by the Division Bench which, however, permitted the Revenue to encash 30 per cent of the bank guarantee. Against this, the Revenue preferred an appeal which was allowed by the Supreme Court holding as follows :

"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."

8. Viewed in the above perspective, we are of the view that the petitioner has not made out a case justifying this Court to entertain this writ petition. The only case urged by learned counsel for the petitioner is that sugar and sugar-candy are one and the same and as such he is entitled to exemption on the whole turnover of sugar-candy as per entry 5 of the Third Schedule to the Kerala General Sales Tax Act, which according to us, is a matter which can be agitated by him before the appellate authority under the statute. This Court is not inclined to decide that question at this stage.

9. In the light of the above discussion, we are of the view that the petition is liable to be dismissed in limine. We do so and the petition is dismissed in limine.

10. However, we make it clear that the petitioner will be at liberty to invoke the jurisdiction of the appellate authority for appropriate reliefs, if so advised and in

the event of the petitioner filing an appeal before the appellate authority, the time spent by Him in prosecuting these proceedings before this Court in this writ petition shall be excluded in computing the period for filing the appeal.

Original petition is dismissed.