

(2003) 09 PAT CK 0084

In the Patna High Court

Case No : C.W.J.C. Nos. 2019, 2022 and 2957 of 2003

Godrej Saralee Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Citation : (2003) 09 PAT CK 0084

Judgement

1. Common questions of facts and law are involved in all the three cases and as such they have been heard together and are being disposed of by this common order.

2. C.W.J.C. No. 2019 of 2003 has been filed challenging the orders of assessment dated January 2, 2003 passed u/s 17(2) of the Bihar Finance Act, 1981 for the assessment year 2001-2002 (as contained in annexure 11 series). C.W.J.C. No. 2022 of 2003 has been filed challenging the orders of assessment dated January 2, 2003 passed under the aforesaid provision for the assessment year 2000-2001 (as contained in annexure 11 series). C.W.J.C. No. 2957 of 2003 has been filed challenging the assessment orders dated December 28, 2002 and January 25, 2003 passed under the aforesaid provision for the assessment years 1999-2000 and 2000-2001 (as contained in annexure 3 series).

3. Admitted fact is that remedy of appeal and revision is available to the petitioner against the impugned orders under the provisions of the Act.

4. Mr. R.K. Dutta, learned Counsel appearing on behalf of the State raised a preliminary objection that in view of availability of efficacious and effective remedy of appeal, these writ applications could not be entertained.

5. Dr. Debi Pal, learned Counsel appearing on behalf of the petitioners of C.W.J.C. Nos. 2019 and 2022 of 2003 and Mr. Rastogi, learned Counsel appearing on behalf of the petitioner of C.W.J.C. No. 2957 of 2003, on the other hand, submitted that the question involved in all the cases are pure question of law and as such existence of alternative remedy is not a legal bar to entertain the writ

applications. In support of the aforesaid submission, learned Counsel for the petitioners drew our attention to the judgments of the Constitution Bench of the apex Court in the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, , Ram and Shyam Company Vs. State of Haryana and Others, , Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and Union of India (UOI) and Another Vs. State of Haryana and Another,

6. Settled law is that existence of alternative remedy is not an absolute bar but the fact that adequate legal remedy is available is an important factor that is to be taken into consideration in the matter of grant of reliefs. In the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, the Constitution Bench held that if it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court. In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , the apex Court held that in a case where order affects jurisdiction in the sense that the authorities has no power to adjudicate upon, the existence of alternative remedy will not be a ground for refusal to entertain a writ petition.

7. In view of the aforesaid settled law, it has to be decided in each case whether the court should interfere in exercise of writ jurisdiction or not when alternative remedy is available. If the vires of the Act is challenged or the order is without jurisdiction or the question involved is of fundamental nature, then the court may interfere inspite of existence of alternative remedy. But the cases where the question for consideration is pertaining to fact or law or the matter relates to consideration of applicability of the provisions of the Act in a given case, the court will insist for exhausting alternative remedy before coming to this Court in exercise of writ jurisdiction.

8. In the present case, the orders of assessment have been passed u/s 17(2) of the Act. In C.W.J.C. Nos. 2019 and 2022 of 2003, Dr. Debi Pal has argued that there is controversy as to whether the orders have been passed after giving opportunity of hearing to the petitioner or not. The stand of the petitioner is that it was not given opportunity of hearing wherein in the counter-affidavit filed on behalf of the State, it is stated that notice was given to the petitioner and even the representatives of the petitioner were present and in their presence date was fixed for hearing of the case.

9. In view of the aforesaid controversy, factual matters have to be considered to find out as to whether the orders of assessment have been passed consistent with the requirements of natural justice or not.

10. The question involved in these cases is as to whether the product of the petitioner is to be taxed at the rate of 4 per cent by treating it as insecticide or 8 per cent by treating it as falling under unspecified head in the tariff Schedule. The other question for consideration is as to at what stage the tax is to be levied.

In support of his submission, learned Counsel for the petitioners referred to the decisions of different High Courts. It is not necessary to mention about the same for the reason that these questions will have to be considered by the appellate authority as in our view the writ applications are not to be entertained on the ground of availability of alternative and efficacious remedy.

11. Under these consideration, we refuse to interfere with the impugned orders. The petitioners may file appeal or revision, as advised, and the authorities may consider the appeal or revision filed by the petitioners on merits. At this stage, it is to be clarified that earlier the Commissioner of Commercial Taxes had issued certain instructions to the authorities with regard to the classification of products and that instruction has been set aside by this Court and as such the petitioners cannot raise question of bias before the Commissioner of Commercial Taxes on the said ground.

12. With the aforesaid observation, all the three writ applications stand disposed of.