
(2000) 05 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17498 of 1999

Hari Om Industry

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 08-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 123 STC 155

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : R.P. Sawhney and A.K. Kalsy, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—Challenge in this writ petition is to the order dated August 4, 1999, passed by the Additional Excise and Taxation Commissioner-cum-Revisional Authority exercising powers u/s 40 of the Haryana General Sales Tax Act, 1973 (for short, "the Act") whereby the order of assessment dated November 16, 1998 was revised and the case remanded to the Assessing Authority for a fresh decision in accordance with the directions issued therein.

2. It is not in dispute that against the impugned order an appeal is competent before the Sales Tax Tribunal u/s 39 of the Act. After the decision of the Tribunal a further remedy by way of reference to this Court is also available to the petitioner but these remedies have not been availed of. What is contended by the learned counsel is that the remedy of appeal is not an efficacious remedy in the facts and circumstances of the present case because in the case of another assessee the Tribunal has already taken a view contrary to the one canvassed by the petitioner in the present case. It is, therefore, urged that even though the petitioner has not exhausted the statutory remedy available to it, this Court should entertain the petition and dispose of the same on merits. He has placed reliance on a decision of the apex Court in *Filterco v. Commissioner of Sales Tax, Madhya Pradesh* [1986] 61 STC 318 and also on the decisions in *Commissioner*

of Sales Tax, *Bombay v. Bharat Petroleum Corporation Ltd.* [1992] 85 STC 220, *Jindal Strips Limited v. State of Haryana* [1996] 100 STC 457 and *Hindsons (P.) Ltd. Vs. The State of Punjab*, , to contend that no useful purpose would be served by pursuing the remedy in appeal because the Tribunal has already expressed its view on the merits of the issue in some other case and the filing of the appeal would be a mere formality as the authorities below would be bound by that decision. We are unable to accept the contention of the learned counsel. The decision given by the Tribunal in the case of some other assessee is not a precedent so as to bind the authorities below and that the same would be binding only between the parties and it will be open to the petitioner in this case to contend to the contrary before the Tribunal. It will be equally open to the Tribunal to take a view different from the one taken in the earlier case and there is no question of that view being binding on the Tribunal in another case or even on the authorities below. As a matter of fact, in tax matters each assessment year is a separate unit for the purposes of assessment and the findings recorded by the Tribunal in any one of the assessment years are not binding even in the case of the same assessee in the subsequent assessment years and it is open to the Tribunal and the authorities below to take a view different from the one taken in the previous year. We are, therefore, of the view that merely because the Tribunal has expressed its view on the merits of the issue in another case is by itself no ground to allow the assessee to circumvent the statutory remedies which have been provided under the Act. We may refer to the observations made by the Supreme Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, wherein their Lordships observed as under :

"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."

3. The petitioner has a right to prefer an appeal before the Tribunal and can have its grievances redressed there. This is not a fit case where the petitioner should be allowed to by-pass the remedies and approach this Court directly under Article 226 of the Constitution.

4. In *Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another*, the Commissioner of Sales Tax in exercise of his statutory powers u/s 42-B of the Madhya Pradesh General Sales Tax Act, 1958 had on a reference made to him determined that twenty-one varieties of compressed woollen felt manufactured by the assessee therein was not eligible for exemption from tax

under the State Act and, therefore, filing of an appeal before the Appellate Assistant Commissioner against such a finding was held to be an exercise in futility because the appellate authority was junior to the Commissioner who had taken the decision. This is not the case before us. *Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another*, is therefore, of no help to the petitioner.

5. In *Jindal Strips*" case [1996] 100 STC 457 a division Bench of this Court had entertained the writ petition and did not direct the petitioner therein to resort to the statutory remedy because the petition remained pending in the court for more than three years after admission. Obviously, the Bench did not think it proper to relegate the petitioner to the statutory remedy which by then had become barred by time. Moreover, mala fides against the Chief Minister had been alleged in that case. We have also gone through the other judgments cited by the learned counsel for the petitioner and find that they are equally inapplicable and do not support the plea raised by the petitioner before us. Since the petitioner has alternative remedies available to it under the Act which, in our view, are efficacious, we refrain from entertaining the petition and dismiss the same. It will be open to the petitioner to pursue the remedy of appeal and further remedies available under the Act. If an appeal is filed within two weeks from today, the same shall be deemed to have been filed within the prescribed period of limitation.