(2001) 01 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1237 of 2000

Hind Syntex Limited — APPELLANT

Vs

State of Rajasthan and Another — RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Sales Tax Act, 1954 — Section 12

Citation : (2001) 123 STC 186

Hon'ble Judges : Rajesh Balia, J;P.C. Tatia, J

Bench : Division Bench

Advocate : Rajendra Mehta, for the Appellant; Dinesh Mehta, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. This appeal relates to order of reassessment passed by the assessing authority under the Rajasthan Sales Tax Act, 1954 for the assessment period 1994-95 u/s 12 of the Rajasthan Sales Tax Act, 1954 on 31st December, 1998. Originally challenge to the reassessment order for the assessment period 1994-95 was made by way of Original Application No. 42 of 1999 before the Rajasthan Taxation Tribunal along with demands raised for reassessment/provisional assessment in respect of assessment years 1994-95, 1995-96, 1996-97 and 1997-98 on the abolition of the Rajasthan Taxation Tribunal, the said Original Application stood transferred to this Court and was registered as S.B. Civil Writ Petition No. 3469 of 1999. On the direction of the court the appellant-petitioner made separate writ petition challenging the orders of reassessment/provisional orders for assessment independently by filing the Writ Petition No. 3469 of 1999 for the assessment year 1994-95 and Writ Petition No. 1228 of 1999 for challenging the reassessment order in respect of 1995-96.

3. The Writ Petition No. 1142 of 1999 challenging the regular assessment order

for 1996-97 and the provisional order for 1996-97 the Writ Petition No. 1237 of 1999 was filed. All these orders were made by the assessing authority on December 31, 1998.

4. All the petitions filed by the petitioner were dismissed by the learned single Judge on the ground of availability of alternative remedy. The petitioner has alleged and the fact has not been disputed that the reassessment has been made on December 31, 1998, in pursuance of notice u/s 12 which was served on the same date.

5. It is on the basis of these facts, learned counsel for the appellant urges that patently order appears to have been made in breach of principles of natural justice as denial of adequate opportunity of hearing is writ large from the fact that the assessment order has been made against him on the date notice for reassessment has been served. In these circumstances the availability of alternative remedy ought not to have been held as a ground for dismissing the petitioner''s writ petition particularly when the same was admitted by the Rajasthan Taxation Tribunal and pending since 1999.

6. Learned counsel for the respondent has supported the orders passed by the learned single Judge.

7. We are of the opinion that the impugned orders have been per se made in breach of natural justice. Ordinarily the availability of alternative remedy is not considered a ground for non-suiting the petitioner for invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. The principle is well-established in the decision of Supreme Court in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, and also on the ground that ordinarily when petition has been admitted and pending for long time, reply has been received, the court shall not dismiss the petition on the ground of alternative remedy alone. The fact is not denied that notice u/s 12 of the Rajasthan Sales Tax Act, 1954 for reassessing, was served on the assessee only on December 31, 1998, and no opportunity whatever could have been afforded to assessee before making an order on that very date. Serving notice u/s 12 before reassessments can be made is not an empty mechanical formality, but is designed to ingrain the proceedings with requirement of affording an adequate and an effective opportunity of hearing to the assessee concerned.

8. It cannot be said that any opportunity of hearing before making assessment against him raising liability to the tune of Rs. 15,26,600 was afforded ; that is to say the issue involved in this case has been decided without hearing the petitioner at all.

9. In these circumstances, we are of the opinion that it ought not to have held as ground for dismissing the writ petition filed by the petitioner. The petitioner is entitled to be heard before any order is passed affecting his right adversely and the assessment order is finalised.

10. We therefore, allow this appeal as well as the writ petition and set aside the order passed on December 31, 1998 and leave the assessing officer free to complete the proceedings u/s 12 in accordance with law and to make fresh reassessment order after giving adequate opportunity of hearing to the petitioner including the personal hearing.

11. There shall be no order as to costs.

