(2015) 02 KAR CK 0190

In the Karnataka High Court

Case No : Writ Petition Nos. 112031/2014 and 100933/2015 (T-RES)

Hotel and Allied Traders Pvt. Ltd. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Value Added Tax Act, 2003 — Section 62(ii)(b), 69(1)

Citation : (2015) 02 KAR CK 0190

Hon'ble Judges : A.N. Venugopal Gowda, J.

Bench : Single Bench

Advocate : Shriharsh A. Neelopant, for the Appellant; K. Vidyavathi, Addl. Govt. Advocate, Advocates for the Respondent

Judgement

A.N. Venugopal Gowda, J.—These writ petitions are directed against the rectification orders, as at Annexures-M and N, passed under Section 69(1) of Karnataka Value Added Tax Act, 2003 (for short The Act''), for the period 2006-07 and 2007-08. Said orders were passed by respondent No. 3 on 30.10.2014 and consequential demand having been made, these writ petitions were filed on 01.12.2014.

2. Learned Additional Government Advocate raised threshold objection. She contended that the impugned orders being appealable in exercise of power under Section 62(ii)(b) of the Act, for non-exhausting the statutory and alternative remedy, these petitions cannot be entertained.

3. Shri Shriharsh A. Neelopant, learned advocate, did not dispute the fact that the impugned orders can be questioned in appeal, as was pointed out by the learned Additional Government Advocate. However, learned advocate contended that there being violation of principles of natural justice, interference is called for.

4. Having considered the rival contentions with regard to the maintainability vis-a-vis availability of alternative and efficacious remedy statutorily provided and, in

view of the decision in the case of Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, preliminary objection of learned Additional Government Advocate is required to be upheld. In the said decision, the Apex Court has held as follows:

"7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extra-ordinary jurisdiction of the High Court under Art. 226 and sought to re-open the decision of the taxing authorities on questions of fact. The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort so that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Art. 226 of the Constitution, the machinery created under the stature to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

(emphasis supplied)

5. In Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, , it has been held that when a statutory forum is created by law for redressal of the grievances, writ petition should not be entertained ignoring the statutory dispensation.

6. Since the petitioners have the right to move the Appellate Authority and seek relief as against the rectification orders, as at Annexures-M and N, by leaving open all contentions, these writ petitions are disposed of.

Time taken in prosecution of these writ petitions from 01.12.2014 shall stand excluded, if the Appellate Authority is approached for relief on or before 28.02.2015.

Certified copies, produced as Annexures to the writ petition, be returned to the learned advocate for the petitioners. No costs.

