(2014) 08 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1311 and 1312/2014 in Civil Writ Petition No. 8480 and 8481/2014

H.S.B. Agro Industries (P) Ltd. — APPELLANT

Vs

State of Rajasthan — RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:
Rajasthan Excise Act, 1950 — Section 9A

Citation : (2014) 08 RAJ CK 0049

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Ravi Suhalkha, Advocate for the Appellant; Murari Sharma and Mahaveer Prasad Sharma, AEO, Advocate for the Respondent

Judgement

1. We have heard Shri Ravi Suhalkha appearing in person and Shri Murari Sharma, District Excise Officer, Sikar & Shri Mahaveer Prasad Sharma, AEO, Sikar, appearing for the State Excise Department.

2. By these D.B. Civil Special Appeals, the appellants have prayed for a direction to summon the entire record pertaining to passing of the impugned notices Nos. 8681 and 8689, dated 01.07.2014 and the Kurki order dated 09.07.2014, to recover an amount of Rs. 3,42,72,000/- from the appellants. Against the said demand, the appellants had filed S.B. Civil Writ Petition Nos. 8480/2014 and 8481/2014, which were dismissed on 01.08.2014, with liberty to the petitioner to pursue alternative remedy of appeal u/s 9A of the Rajasthan Excise Act, 1950 (in short, ''the Act''). The Court has observed that no good reason was given as to why the remedy of appeal may not be exhausted before approaching the Court

3. It is submitted by the representative of the appellant-Company, appearing in person, that appeals have been preferred, which could not be heard as the Commissioner of Excise was busy and that in the meantime, the Kurki warrants are being pursued.

4. The Departmental representative informs the Court that the appeals preferred by the appellants are incompetent inasmuch as any appeal filed u/s 9A of the Act, requires deposit of 75% of the amount in dispute. It is further submitted that the import permits of the appellants purportedly issued by M/s. Ganga Industry C Sector, Itanagar, Arunachal Pradesh, are forged documents, as is evidenced by the letter of the Commissioner, Tax & Excise, Itanagar, Government of Arunachal Pradesh, dated 27.06.2014, sent to the District Excise Officer, Sikar, Rajasthan. In this letter, the Commissioner, Tax & Excise, Itanagar (Arunachal Pradesh), has informed that there is no such industry by way of M/s. Ganga Industry ''C'' Sector, Itanagar, Arunachal Pradesh, in their records.

5. It is submitted by the appellants that their industry is lying closed and that their financial condition is not such that they may deposit 75% of the amount in dispute and thus, the remedy of appeal is illusory. He submits that the Court may interfere as the orders of recovery are without jurisdiction and for that purpose, he relied upon the judgment of the Supreme Court in Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, and the judgments of this Court in M/s. Samrat Bottlers Pvt. Ltd. Vs. State of Raj. & ors., 1988(2) RLR 577, R.N. Products Vs. State of Rajasthan and Others, and Suman Singh (Smt.) Vs. State of Raj. and Others,

6. The writ petitions were dismissed on the ground of alternative remedy. We do not find any error in the judgment of the learned Single Judge, relegating the petitioner to pursue the remedy of statutory appeal against the order of the District Excise Officer. The judgment of learned Single Judge does not suffer from any error in law, nor the orders are so palpably illegal that the writ petitions should have been entertained without relegating the petitioner to file an appeal provided under the Act.

7. In the present case, there is serious dispute with regard to the genuineness of the import permits. The Departmental representative has submitted on the basis of the confirmation letter received from the Commissioner, Tax & Excise, Itanagar, Government of Arunchal Pradesh, that no industry by way of M/s. Ganga Industry C'' Sector, Itanagar, Arunachal Pradesh, is in existence in the State of Arunchal Pradesh. In the circumstances, the question regarding validity of the excise import permits, has to be considered by the Appellate Authority in deciding the appeals.

8. So far as the argument that the remedy of statutory appeal is illusory for deposit of 75% of the amount of disputed demand, we do not find any averment in the writ petitions or in the present appeals regarding the financial condition of the appellants. The balance sheets of the appellant-Company have not been filed, nor there is any statement on record that the appellants do not have reserves to deposit 75% of the demand.

9. Both the special appeals are accordingly dismissed.

10. I.A. Nos. 19577/2014 and 19626/2014 are disposed of.

11. A copy of this order be placed in connected file.

