(2011) 11 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1334 of 2009

Ircon International Ltd. APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Value Added Tax Act, 2003 — Section 8(3), 82

Citation : (2012) 54 VST 285

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant; R.L. Jangid, Additional Advocate-General and with Vimal Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—The petitioner, a Government of India undertaking and public sector company, Ircon International Ltd., through its Deputy General Manager (Finance) has approached this court by way of present writ petition aggrieved by the assessment order, annexure P/10, dated February 6, 2009, whereby the learned assessing authority, namely, Commercial Taxes Officer (Works Contract & Leasing Tax), Ajmer, passed the order against the petitioner-company, which was awarded the works contract of gauge conversion of railway tracks in Ajmer to Rewari segment. The petitioner-company applied for exemption certificate from sales tax on payment of fixed exemption fees of the total value of the contract under the Notification No. F.12(63)FD/Tax/2005-80 dated August 11, 2006 issued u/s 8(3) of the Rajasthan Value Added Tax Act, 2003. The relevant list of the types of contracts and percentage of exemption fees as given in the said notification is reproduced herein below for ready reference :

2. The petitioner-company was initially granted exemption certificate on the basis of payment of exemption fees at the rate of 1.50 per cent under clause (2) of the

said list in the notification dated August 11, 2006, reproduced above, vide annexure P/6 dated November 2, 2006 on the application moved by the petitioner-company dated October 17, 2006 (annexure P/5). The respondent-CTO later on gave the show-cause notice to the petitioner-company vide annexure P/7 dated January 30, 2009 to the effect that the petitioner''s contract of gauge conversion of railway tracks could not fall under clause (2), reproduced above, but would fall in the residuary clause (4) to which exemption fees of three per cent of total value of contract was attracted.

3. On the date fixed by the assessing authority on February 6, 2009, the concerned advocate appearing for the petitioner-company, filed an adjournment application on the ground of marriage of sister''s daughter on February 9, 2009 at Lucknow (U. P.). However, the said assessing authority rejected the adjournment request and passed the impugned assessment order on February 6, 2009 and held that conversion of railway gauge was not the construction of roads ; and therefore, exemption fees of 1.50 per cent paid was not correct and the assessee was liable to pay the exemption fees at three per cent of the total contract value under the aforesaid notification dated August 11, 2006. A demand of Rs. 1.18 crore at three per cent was raised against the petitioner-assessee company, out of which half was already paid at 1.50 per cent.

4. The learned counsel for the petitioner, Mr. Sanjeev Johari, urged that there was breach of principles of natural justice in the present case as the advocate concerned was busy in the marriage of his sister''s daughter marriage at Lucknow on February 9, 2009 and the date fixed by the learned assessing authority at Ajmer on February 6, 2009 did not suit him and he prayed for adjournment before the said assessing authority, which ought to have been granted by him and in view thereof, the impugned order deserves to be quashed. On merits of the case also, he sought to urge that laying down of railway tracks is akin to road construction work and giving a wider meaning to clause (2) of the list contained in the notification dated August 11, 2006 (annexure 1), the exemption fees of 1.50 per cent of the total value of contract paid by the petitioner-assessee was correctly paid and the learned assessing authority had erred in demanding three per cent exemption fees under clause (4) of the said notification. He relied upon these judgments in support of his contentions about the breach of principles of natural justice.

(1) State Bank of India Vs. Km. Chandra Govindji, .

(2) S. K. Gupta v. Commissioner, Sales Tax [1986] 61 STC 20 (Delhi).

(3) Warangal District Co-operative Marketing Society Ltd. v. State of Andhra Pradesh [1983] 54 STC 385 (AP).

(4) National Thermal Power Corporation Ltd. v. State of Orissa [2002] 128 STC 321 (Orissa).

(5) Commercial Tax Officer v. T. V. Sundaram Iyengar & Sons Ltd. [1998] 108

STC 471 (Mad).

(6) M. S. Jewellery v. Assistant Commissioner (Assessment) [1995] 97 STC 455 (Ker).

5. On the other hand, Mr. R. L. Jangid, Additional Advocate-General and senior advocate assisted by Mr. Vimal Mathur, submitted that the present writ petition is not maintainable since effective alternative remedy is available to the petitioner-company against the impugned assessment order. Countering the submissions of breach of principles of natural justice, he submitted that the assessing authority has given adequate reasons for rejection of such adjournment request in the impugned order itself, namely, that works contract itself was near completion at that time and if such complete exemption fees was not recovered from the petitioner-contractor company, it might cause serious prejudice to the interest of the Revenue. He also submitted that on the date of hearing fixed by the assessing authority on February 6, 2009, the marriage in the relation of the advocate concerned, was three days away and it could not be said to be justifiable reason for seeking adjournment. He also submitted that adjournment is not a matter of right and the assessing authority for given reasons could always turn down that.

6. Making submissions on the merits of the case also, learned AAG submitted that laying down of the railway tracks by way of gauge conversion from meter gauge to broad gauge, it cannot be said that it amounted to road construction work falling under clause (2) of the notification dated August 11, 2006 and, therefore on the merits also, the assessing authority was justified in demanding three per cent of the total contract value as the exemption fees. He, therefore, prayed for the dismissal of the writ petition on both the grounds.

7. Firstly, this court expresses its concern about a Government of India undertaking is pitched against the State Government, namely, Commercial Taxes Department of the Government of Rajasthan by filing the present writ petition without seeking any resolution of dispute from the High Powered Committee of the Disputes constituted by at the Central Government level under the orders of apex court of the country in the case of Oil and Natural Gas Commission v. Collector of Central Excise reported in [1999] 116 STC 415 at 418 (SC) ; [1995] 4 SCC 541, in which the honourable Supreme Court clearly expressed its anguish that interse fight of the Government departments straightaway taken to the courts of law, deserves to be strongly deprecated and put down and such disputes should be first taken to and resolved before such High Powered Committee on Disputes ("COD", for short). The relevant extract of said judgment is reproduced hereunder (pages 418 and 419 in 116 STC) :

3. We direct that the Government of India shall set up a Committee consisting representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government

of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the committee. Senior officers only should be nominated so that the committee would function with status, control and discipline.

4. It shall be the obligation of every court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

5. The committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. This court would expect a quarterly report about the functioning of this system to be furnished to the registry beginning from January 1, 1992.

6. Our direction may be communicated to every High Court for information of all the courts subordinate to them.

8. Without taking any such recourse, the petitioner-company straightaway filed this writ petition that too on the flimsy grounds of breach of natural justice by way of refusal on the part of the assessing authority to grant adjournment on the ground of marriage in the relation of the advocate representing the petitioner-company after three days of the date fixed by the assessing authority. Firstly, in the opinion of this court, there was no breach of principles of natural justice at all. The show-cause notice giving such opportunity to the assessee-company was duly served upon it. Secondly, even it is taken to be so for argument sake, nothing prevented the petitioner-company from making its submission on the merits on February 6, 2009 and after order was passed by the assessing authority from taking the recourse to the statutory alternative remedy available to it under the provisions of Act. Section 82 of the Rajasthan Value Added Tax Act, 2003, provides that an appeal against all assessment orders raising a demand of tax, interest or penalty against the assessee lies before the Deputy Commissioner (Appeals).

9. This court finds no sufficient reasons, nor the case falling to be within the well established parameters of taking exception to the rules of availing the regular remedy under the Act in the present case. Not only the question of merit raised by the petitioner-company and Revenue as to whether laying down of railway tracks upon gauge conversion, the contract for which was given to the petitioner, amounts to road construction or not, falling within the clause (2) of the notification dated August 11, 2006, extracted above, is a debatable question of law, which may require a legal debate on the basis of facts and evidence established by the assessee before the assessing authority ; and it would require adjudicatory process to be undertaken by the authorities created under the Act.

This court in extraordinary jurisdiction under article 226 of the Constitution of India cannot be called upon to decide such complex questions of facts and law at the initial stage without such debate having taken place before the authorities created under the Act.

10. The ruse of breach of principles of natural justice taken by the petitioner-company as a ground for maintaining the writ petition before this court, deserves to be negatived as the principle of natural justice, as held by the honourable Supreme Court in the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, is not an unruly horse or a lurking land mine or a judicial cure all. The writ jurisdiction need not be invoked at the instance of a public limited company of the stature of which present petitioner-company is, which was awarded the contract of gauge conversion of railway tracks on Ajmer to Rewari segment to the tune of Rs. 113 crores. The said company being well advised about the law and legal position, could not and should not have sought adjournment in the first instance on such flimsy grounds ; and even if it did, it was further ill-advised to straightway knock the doors of this court under article 226 of the Constitution of India.

11. The cut-short of statutory procedures of appellate and revisional forums before the authorities created under the Act and burdening the dockets of this court could hardly said to be a well-advised proposition of law. Not only the said Central Government undertaking did not think it fit to resolve the dispute with the Department of State Government, through the alternative mechanism of the Committee of the Disputes (COD) constituted by the Central Government under the orders of the apex court, nor instead of availing of the regular remedy under the provisions of the Rajasthan Value Added Tax Act, 2003, it straightway sought quashing of the impugned assessment order by way of present writ petition.

12. As already indicated above, since the questions involved in the present case are complex questions of facts and law and being mixed questions, which require process of adjudication through the assessment, appellate and revisional forums, which requires leading of evidence and a legal debate, the said exercise can hardly be undertaken in the extraordinary jurisdiction of this court under article 226 of the Constitution of India. Therefore, this court finds considerable force in the objections raised by the learned Additional Advocate-General on behalf of State Government and is not inclined to entertain this writ petition on the merits in view of availability of alternative remedy to the petitioner-company, both before of COD and before the appellate authority created under the Rajasthan VAT Act, 2003. In view of above discussion, the present writ petition is found to be devoid of merit and same is accordingly dismissed. No costs.

