
(1994) 07 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12789 of 1994

ITC Limited

APPELLANT

Vs

Commercial Tax Officer, Guntur and Another

RESPONDENT

Date of Decision : 22-07-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 3 ALT 384 : (1998) 111 STC 694

Hon'ble Judges : P. Venkatarama Reddi, J;K.M. Agarwal, J

Bench : Division Bench

Judgement

P. Venkatarama Reddi, J.—The petitioner has challenged in this writ petition the reassessment order dated June 18, 1994 made by the 1st respondent under the A. P. General Sales Tax Act, 1957, for the assessment year 1992-93. By that order, the Commercial Tax Officer subjected to tax an additional turnover of Rs. 1,45,57,499 and raised a demand for Rs. 12,00,994. The said turnover represents the consideration received by the petitioner in connection with transfer/ surrender of replenishment licence and exim scrips. Drawing inspiration from the judgment of the Karnataka High Court in Bharat Fritz Werner Ltd. v. Commissioner of Commercial Taxes [1992] 86 STC 175, the Commercial Tax Officer resorted to reopening of the assessment and held that the transactions amounted to sales taxable under the A. P. General Sales Tax Act. It is contended by the learned Senior Counsel Mr. Anantha Babu that the idea of transfer of property in goods is alien to the transactions in question. What was transferred could only be regarded as the right to obtain the goods on import but not the goods themselves and as far as surrender is concerned, there is no transferor and transferee at all. It is submitted that certain crucial aspects of the case were not projected before the Karnataka High Court.

2. We are not inclined to entertain this writ petition and decide the questions raised in the writ petition considering the fact that the petitioner has adequate alternative remedies under the Act by way of appeal, second appeal and revision

to the High Court. The Supreme Court repeatedly held that where such alternative remedies exist, the High Court should refrain from entertaining writ petitions under article 226 of the Constitution against the assessment orders (vide *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, and *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, . In the latter case, the Supreme Court deprecated the practice of the High Court exercising the extraordinary jurisdiction ignoring the statutory machinery provided under the taxing enactment. Their Lordships observed :

"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 learned counsel has submitted that this is a case where disputed questions of fact are not involved and a purely legal issue has to be settled and it is difficult to expect the statutory authorities to go into the settled questions involved. We do not think that these factors by themselves afford sufficient justification to by-pass the normal remedies under the Act. No doubt, arguable questions do arise, but the appellate and revisional authorities constituted under the Act are not helpless or handicapped to decide these issues.

4. The learned counsel then submitted that the filing of appeal would be an empty formality inasmuch as the entire proceedings have been initiated by the 1st respondent only pursuant to the departmental instructions of his superiors. From the fact that a copy of the impugned assessment order was marked to the Deputy Commissioner, Guntur, he wants us to infer that the appellate authority will not be able to decide the appeal independently. We are unable to accept this contention for more than one reason. Firstly, the Appellate Deputy Commissioner (Appeals) is not a subordinate to the Deputy Commissioner-in-charge of administration; secondly, the Deputy Commissioner being a revisional authority, it is not unusual to mark a copy of the assessment order to him. We do not, therefore, think that the appellate authority will not be able to decide the appeal independently. Even if there are such administrative instructions, we would like to make it clear that the appellate authority is not bound by the same as he is, in exercise of quasi-judicial functions, expected to give an objective disposal to the appeal in accordance with law.

5. In the circumstances of the case, while we express our disinclination to entertain this writ petition, we direct that there shall be stay of recovery of tax pursuant to the impugned demand, for a period of one month from today. It is

open to the petitioner to file an appeal and move the appellate authority for stay pending appeal. If an appeal is filed within two weeks from today the same shall be entertained without raising any objection as to limitation. We also direct, having regard to the facts and circumstances of the case, that the appeal shall be disposed of within a period of three months from the date of filing the same.

The writ petition is summarily disposed of with the above directions and observations. No costs.

6. Writ petition dismissed.