
(1983) 09 RAJ CK 0019
In the Rajasthan High Court
Case No : Special Appeal No. 198 of 1983

Kota Box Manufacturing Co.	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 16-09-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 34

Citation : (1984) 55 STC 207

Hon'ble Judges : Gopal Krishna Sharma, J; G.M. Lodha, J

Bench : Division Bench

Advocate : P. Chand Jain, for the Appellant;

Final Decision : Dismissed

Judgement

1. This is an appeal u/s 18 of the Rajasthan High Court Ordinance against the judgment of a learned single Judge of this Court dismissing the writ petition of the appellants.
2. The short point pressed before us in this appeal relates to the correctness of the view taken by the learned single judge that since the assessee in the instant case can raise the objections in respect of the reassessment of sales tax before the taxation authority and then if necessary file an appeal, this Court should not interfere under Article 226 of the Constitution.
3. The question which was raised before the learned single Judge related to the meaning of the packing material for which notice u/s 12 was issued to the petitioner-appellant.
4. The learned single Judge was of the view that the petitioner has got ample opportunity to appear before the assessing authority and to raise all the contentions before him and then there is a complete machinery of appeal and revision under the Act. In this view of the matter the learned Judge refused to entertain the writ petition against the issuing of notice u/s 12 as he was of the

opinion that the assessing authority had jurisdiction to issue such notice and other questions about the correctness or propriety of the proposed reassessment, the assessing authority would decide them after hearing the assessee.

5. In this connection reliance was placed by learned single Judge on the judgment of this court in *Bhanwarlal Binjaram v. Assistant Commercial Taxes Officer, Jodhpur* 1976 WLN 459, in which it was held that

the Sales Tax Act has a complete machinery and hierarchy of Tribunals where these questions can be agitated.

6. In the decision of *Bhanwarlal Binjaram's* case 1976 WLN 459 Section 12(1) of the Act was further interpreted and it was held that it was wide enough and the powers of the Commercial Taxes Officer under the section are not circumscribed by any condition, placing reliance upon the judgment of *Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar*, while interpreting the Bihar Agricultural Income Tax Act, 1938, which used the same expression "for any reason", it was observed that the use of the words "any reason" which are of wide import dispenses with those conditions by which Section 34 of the Indian Income Tax Act is circumscribed.

7. Learned single Judge also took notice of the fact that earlier the same assessee filed an appeal for the assessment year 1973-74, in respect of the objection regarding interpretation of the packing material and he was given relief by the Deputy Commissioner and therefore, there was no reason that why he should not adopt the same method for the assessment year 1977-78.

8. Mr. Jain submits that the above view of learned single Judge is not correct because no appeal lies against the notice and further availability of alternate remedy is no bar to entertainment of writ petitions of such nature. He further submitted that a reference is already pending before this Court in respect of the interpretation of packing material. Reliance was placed on the judgment of this Court in *Commercial Taxes Officer v. Sita Ram Satishchandra & Co., Jaipur* 1979 WLN 771.

9. We have very carefully given thoughtful consideration to the contentions of Shri Jain. We are of the opinion that the view of learned single Judge is based on just and proper reasons and calls for no interference in this special appeal. It is true that even when alternate remedy is available to the writ petitioner, this Court can interfere under Art. 226 of the Constitution, if extraordinary circumstances are made out showing either lack of jurisdiction or excess of jurisdiction or violation of principles of natural justice or such analogous reasons.

10. In the instant case we are in agreement with the view of the learned single Judge that there was no patent lack of jurisdiction of the assessing authority in issuing notice u/s 12 of the Act. We are also in agreement with the view of the learned single Judge that these objections can be raised before him in respect of

the interpretation to be put on the packing material and other words and if the reassessment is done rejecting those objections a remedy is there in the Sales Tax Act. The fact that earlier an appeal was filed and relief was granted, may be to an extent as now pointed out by Shri Jain, further shows that adjudication should be left to the assessing authorities and normally we should not lose that jurisdiction by exercising the extraordinary jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, whether the petitioner can have any effective, efficacious, alternate remedy, is a self imposed restriction by the courts and there are very good, sound, judicial reasons for it. We are, therefore, not inclined to take a different view in the matter than the one taken by the learned single judge. The mere fact that a reference is pending in some other case cannot be a ground for prohibiting the assessing authorities from interpreting the relevant provisions according to the existing law of the land and framing all the matters of such interpretation to flout the dockets of this court.

11. Shri P. C. Jain submits that the assessing authorities are not acting according to the judgment of the Deputy Commissioner given earlier for the year 1973-74 on the ground that the State has filed a revision. He prays that a direction may be given to the assessing authority to act according to the judgment of the Deputy Commissioner.

12. We are afraid no such direction can be given by this Court because firstly, it is expected the subordinate assessing authority would always respect decisions of the higher and the Deputy Commissioner comes in that. In the very nature of things unless the judgment of Deputy Commissioner is reversed or its operation is stayed, the original assessing authorities are bound to accept it unless there is some other judgment to the contrary.

13. We have, therefore, no hesitation in holding that this appeal is devoid of any fact and the same is dismissed.