(2021) 12 UK CK 0331

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2788 Of 2021

Maa Sheetla Udyog Private Limited APPELLANT

Vs

State Of Uttarakhand & Others RESPONDENT

Date of Decision : 29-12-2021

Acts Referred:

Uttarakhand Value Added Tax Act, 2005 — Section 25(7), 29(1), 51
Constitution Of India, 1950 — Article 226

Citation : (2021) 12 UK CK 0331

Hon'ble Judges : S.K. Mishra, J;N.S. Dhanik, J

Bench : Division Bench

Advocate : P.R. Mullick, Mohit Maulekhi

Final Decision : Dismissed

Judgement

S.K. Mishra, J

1. This writ petition has been filed by the petitioner praying for issuance of a writ in the nature of certiorari quashing the assessment order passed

under Section 25(7) of the Uttarakhand Value Added Tax Act, 2005 (hereinafter referred to as â??the Act of 2005â?? for brevity) for the

assessment years 2018-19 & 2019-20 dated 28.01.2021 (Annexure-3 colly), and the assessment order passed under Section 29(1) for the assessment

yars 2018-19 & 2019-20 (Annexure-4 colly), and to further issue a writ of mandamus directing the respondents to commence de novo fresh

assessment proceedings, after providing the petitioner, a copy of the SIB report and after issuing a specific show cause notice to the petitioner for both

the assessment years 2018-19 & 2019-20.

2. Admittedly, an alternative efficacious remedy is available under Section 51 of the Act of 2005 to the petitioner. So, this Court is of the opinion that

the petitioner should have availed the alternative remedy, rather than approaching this Court under Article 226 of the Constitution of India.

3. Mr. P.R. Mullick, the learned counsel for the petitioner, has very emphatically relied upon the following six judgments:

(I) Raghuvar Mondal Hari Har Mondal vs. State of Bihar, 1957 AIR 810

(II) Malabar Industrial Company Ltd. vs. CIT (2000) 109 Taxman 66 (SC)

(III) Badrinath vs. Government of Tamil Nadu & Ors., (2000) 8 SCC 395

(IV) Commissioner of Income Tax vs. Eicher Ltd., (2007) 163 Taxman 259 (Delhi)

(V) Vehalana Steels and Alloys Pvt. Ltd. vs. State of U.P., 2008 (ADJ) 628

(VI) M/s Neelkanth Sweets vs. Commissioner Commercial Tax U.P. (Trade Tax Revision No. 13 of 2013)

And, thereafter, contended that a writ petition is even maintainable against an order of assessment passed by the Assessing Authority.

4. This Court asked Mr. P.R. Mullick, the learned counsel appearing for the petitioner, thrice, to take the Court to that portion of the aforesaid

judgments where any ratio about the maintainability of a writ petition against an order of assessment passed by the Assessing Authority have been laid

down. But he could not show the same. Further, he failed to point out from the aforesaid judgments cited by him in this case that in the case of

availability of an alternative efficacious remedy, a writ application should be entertained without making out any special case, like violation of principles

of natural justice, etc.

5. Though it is submitted by Mr. P.R. Mullick, the learned counsel for the petitioner, that there has been violation of the principles of natural justice in

this case in the sense that a copy of the SIB report was not given to the assesse, we are of the view that this aspect can be looked into by the

Appellate Authority under Section 51 of the Act of 2005, but Mr. P.R. Mullick, the learned counsel for the petitioner, has a grievance that in case of

an appeal under Section 51 of the Act of 2005, the petitioner will have to deposit a statutory amount, which the petitioner is not in a position to bear.

Only for that grievance, this writ petition cannot be entertained by this Court. The writ petition is, therefore, dismissed being devoid of any merit.

6. No order as to costs.