(1986) 02 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Writ Petition No. 261 of 1985

Mahavir Insulations Private Limited — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 11-02-1986

Acts Referred:

Citation : (1986) WLN 305

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, J.—The petitioner has filed the present writ petition challenging the order of assessment dated 20th October, 1984 (Annexure-2) passed by the Assistant Director, Land & Building, Ajmer and (Annexure-3) impugned demand in pursuance of the assessment order.

2. The petitioner is a private limited company registered under the Companies Act, 1956 and having its registered office at Bombay and factory at Bhilwara in Rajasthan. The petitioner is carrying on the business of manufactures of mica insulating bricks in its factory. The petitioner was allotted six acres of land by the Rajasthan Industrial and Mineral Development Corporation Limited in the year 1973 and the petitioner consturcted a factory over this land. Apart from other buildings the petitioner also cosutructed one chimny and four furnaces in its factory. The grievance of the petitioner is that these four furnances and one chimny do not fall within the definition of ''buildings'' under the provisions of the Rajasthan Land and Buildings Tax Act, 1964 (here in after referred as the Act).

3. A detailed reply has been filed by the respondents and an objection has been raised that the petitioner has directly filed a writ petition against the order of assessment when he has an alternative remedy by way of appeal under the Act itself.

4. Mr Mehta appearing for the petitioner does not dispute this fact that there is

an alternative remedy available by way of appeal under the Act itself and he has availed the same his and appeal is pending. M. Mehta submits that in fact the authorities have wrongly held furnaces and chimney as a buildings taxable under the Act. Be that as it may whether the assessing authority has rightly assessed or not, that can be debated before the appellate authority, when there is a statutory alternative remedy, is provided under the Act then normally this court will not interfere unless it is a case of absolute lack of jurisdiction or the order is perverse. Thus, the petitioner should exhaust the alternative remedy availed under the Act before approaching this court.

5. In the result, I do not find any merit in this writ petition on the ground of alternative remedy being availed under the Act by the Petitioner and it is dismissed.

6. Mr. Mehta has submitted that an stay order was passed by this court on 30th January, 1985, where by the operation of Annexure-3 has been stayed. He further submits that he has already filed an appeal before the appellate authority, therefore the stay order should be allowed to continue. The ad interim stay order granted on 30th January, 1985 shall remain force for a period of 30 days if the petitioner deposits Rs. 40,000/- within this time then the remaining demand shall remain stayed till the disposal of the appeal by the appellate authority. The appellate authority is directed to dispose of the appeal within a period of two months from today. A copy of this judgment should be sent to the appellate authority forthwith.