(1998) 02 PAT CK 0039

In the Patna High Court

Case No : C.W.J.C. No. 10 of 1989 (R)

Mohit Udyog APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Constitution of India, 1950 — Article 226

Citation : (1998) 1 BLJR 473 : (1998) 2 PLJR 136

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Being aggrieved by an order of assessment dated 3.1.1997 for the assessment year 1992-93 passed u/s 9(2) and 2A of the Central Sales Tax Act read with Section 17(2) of the Bihar Finance Act by the Deputy Commissioner of Commercial Taxes, the petitioner has filed this writ petition.

2. At the threshhold, Mrs. I. Senchoudhary, learned S.C.I., has raised a preliminary objection as regards maintainability of this writ petition on the ground of alternative remedy of appeal as well as revision. The learned Counsel for the petitioner has, in this connection, submitted that the petitioner cannot file an appeal without depositing 20% of the demand so raised under the assessment order. His contention is that the petitioner does not have the fund to deposit 20% of the demand on account of which it is just not possible to file the appeal. It is further submitted that as question of law is involved in this case, this Court should decide the writ petition on merits instead of relegating the petitioner to the alternative forum. The learned S.C.I. in reply submits that the petitioner is not a petty dealer and it can very well file the appeal after depositing 20% of the demand. It is further submitted by her that if the petitioner does not want to file an appeal, It is open to it file a revision which can be filed without any initial deposit of the demand or part thereof.

3. The learned Counsel for the parties have cited case laws in support of their respective submissions as regards alternative remedy. It is not necessary to cite all those cases in this judgment and it is sufficient to take note of only a few of them for the purpose of this case. In Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , Supreme Court has laid down as follows:

3...Article 226 is not meant to short-circuit or circumvent 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 matter involving the revenue where statutory remedies are available are not such matters....

In the State of Goa and others Vs. Leukoplast (India) Ltd. etc., the Supreme Court reiterated that it is not open to the assessee to by-pass the statutory remedies under the Sales Tax Act and approach the High Court with the writ petition.

4. A Division Bench of this Court in C.W.J.C. No. 49 of 1997 (R) on 10.1.1997 has also held as follows:

Once assessment orders have been passed under the provisions of the Central Sales Tax Act and under the Bihar Finance Act, 1981, the remedy of the petitioner is either to file an appeal or revision under the Bihar Finance Act.

The Bench accordingly dismissed the writ petition filed against the assessment order. The same rule was reiterated by another Division Bench of this Court in Telco Ltd. v. State of Bihar and Ors. C.W.J.C. No. 777 of 1997 (R) holding that "the writ court will not allow the aggrieved person to by-pass the statutory remedies by entertaining the writ application against the assessment order."

5. In the impugned assessment order, the stock transfer was treated as a sale and was accordingly assessed to Sales Tax. According to the petitioner, the stock transfer from one branch to another or from Head Office to the Branch Office cannot be treated to be a sale and is not liable to be assessed to the Sales Tax. But whether such a transaction is really a stock transfer or a device invented to escape from the clutches of the taxation laws is a question to be decided on the basis of the materials on the record. Such a question is not a pure question of law and therefore, the statutory forum provided in the form of appeal or revision is the proper forum for resolving such a controversy. This Court under Article 226 of the Constitution is not the appropriate Court for deciding such a dispute.

6. That apart prima facie, it is difficult to accept the petitioner''s submission that it does not have fund to deposit 20% of the demand so raised under the

impugned assessment order in order to file appeal. It is, however, not necessary to comment any further on this aspect because we neither have complete records in this regard, nor are we expected to go into this question. But we must take notice of the fact that, the stock transfer shown by the petitioner is of more than Rs. one crore and it is, therefore, not an ordinary petty dealer. In view of the facts and circumstances of the case, this writ petition is liable to be dismissed on the ground of alternative remedy.

7. This writ petition is accordingly dismissed on the ground of alternative remedy. It is open to the petitioner to file either an appeal or a revision and if an appeal or a revision is filed, the appropriate authority shall decide the same as expeditiously as possible.

