
(2000) 08 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Writ Petition No. 651 of 655 of 2000

M/s. B.S.L. Ltd., Bhilwara

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Constitution of India, 1950 — Article 21
Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976 — Section 23,
24, 25, 30, 34
Rajasthan Sales Tax Act, 1954 — Section 12

Citation : (2001) 2 RLW 857

Hon'ble Judges : V.G. Palshikar, J

Bench : Single Bench

Advocate : Vineet Kothari, for the Appellant; Sangeet Lodha, for the Respondent

Judgement

Palshikar, J.—These five petitions have been filed by M/s. BSL Ltd. By these petitions, which are identical in nature, the petitioner which is a Company duly constituted and registered under the Companies Act, 1956 has challenged the show cause notice issued to it by the Commercial Taxes Department, Bhilwara, Govt. of Rajasthan. Since all the petitions involve identical questions of fact and law, with the consent of the parties, they were heard together and hence, this common order.

(2). The petitioner purchased diesel from Indian Oil Corporation and Bharat Petroleum Corporation during the relevant assessment year and concessional lax and surcharge was paid on it @ 3% instead of 4% as was leviable and in so doing, the Company has misused the ST Form No. 17. According to the Department, therefore, this payment of tax @ 3% instead of 4% amounts, in the circumstances, to evasion of tax and hence, notice to show cause was issued why the Company should not be penalised for such misuse and evasion.

(3). These notices are challenged by these petitions principally on the ground that (i) the Commercial Taxes Officer, Anli- evasion, has no jurisdiction to issue

the impugned notices; (ii) the entire notices and the action purported to be taken in pursuance thereto is without jurisdiction; (iii) even if the notices are validly issued, there is no evasion of any tax. Use of ST Form No. 17 was proper and hence, there is no cause of action for issuance of the notices itself. Consequently, it is void ab initio; (iv) the interpretation sought to be put on the several notifications by the State and the Commercial Taxes Officer is incorrect. If properly read, even under the said notification, the use of ST Form No. 17 by the petitioner was only on concessional rate of tax at 3% was proper; (v) alternatively it is submitted that the notification itself is liable to be quashed as ultravires the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the Act").

(4). In view of the above contentions raised in the petitions, notices to show cause why the petitions should not be admitted were issued by this Court and in response to the notices, a detailed reply has been filed by the Department. By the reply, certain substantial preliminary objections have been raised to the maintainability of the petitions. The preliminary objections raised by the respondents stated briefly are as under:-

(a) that no petition directly against show cause notice is maintainable;

(b) that the petition is filed on 6.3.2000 when the notices were issued on 13.12.99 and after receipt of reply from the petitioners, the Assessing Authority decided the notices on 25.2.2000 after hearing the assessee and an order was passed in the presence of the authorised representative of the Company Mr. Sunil Surana and Mr. Heera Chand Jain. Consequently, to the knowledge of the petitioner, a valid order was made by the competent authority and, therefore, the show cause notices did not survive and culminated into an order, which ought to have been challenged;

(c) that sections 84, 85 and 86 of the Act provide remedy of appeal and revision under the statute itself to any aggrieved person. In effect, effective, efficacious alternative remedy exist and, therefore, these petitions are not liable to be entertained.

(5). Apart from these five petitions pending, 1 have come across in the last fortnight or so several such petitions indicating that there is a growing tendency particularly in tax mailers to approach the High Court as a matter of course even against the show cause notices. The Rajasthan High Court has in so far as Industrial Law is concerned taken a view in the five Judges Bench unanimously that availability of alternative remedy is a bar to maintainability of a writ petition directly. However, in spite of such authoritative pronouncement of this Court, petitions were filed directly before this Court in regard to Service Mailers as defined in the Rajasthan Civil Service Appellate Tribunal Act, 1976, without approaching the Tribunal established for the purpose. Similar objections were raised regarding maintainability of the petition and it was held that existence of such remedy would act as an effective bar and normally jurisdiction should not directly be exercised in such matters. Thus, an argument that the decision in

Gopi Chand Teli vs. State of Rajasthan (1), is restricted to the industrial law only was repealed. In spite of these two decisions and several other judgments of this Court in these cases, it is also contended that the preliminary objection is liable to be overruled. Taking into consideration the fact that such question is of regular recurrence and the law on the question of alternative remedy is being flouted, I have, therefore, with the consent of the Parties, decided to consider this aspect of preliminary objections first without dealing with the cases on merits.

(6). The facts in these cases are undisputed and I am, therefore, called upon to decide all these questions of law on undisputed facts. The basic question of law as to whether a writ petition against a show cause notice under the Rajasthan Sales Tax Act can be directly entertained in the effective alternative remedy existing u/s 84 and other provisions of the Act. Shri Sangeet Lodha, learned counsel appearing on behalf of the Sales Tax Department submitted the following as preliminary objections:-

(a) that no petition directly against show cause notice is maintainable;

(b) that the petition is filed on 6.3.2000 when the notices were issued on 13.12.99 and after receipt of reply from the petitioners, the Assessing Authority decided on 25.2.2000 after hearing the assessee and an order was passed in the presence of the authorised representative of the Company Mr. Sunil Surana and Mr. Heera Chand Jain, Consequently, to the knowledge of the petitioner, a valid order was made by the competent authority and, therefore, the show cause notices did not survive and culminated into an order, which ought to have been challenged.

(c) that sections 84, 85 and 86 of the Act provide remedy of appeal and revision under the statute itself to any aggrieved person. In effect, effective, efficacious alternative remedy exist and, therefore, these petitions are not liable to be entertained.

In support of its claim, he cited several authorities of this Court as also the Supreme Court of India. In reply to the submissions made by Shri Sangeet Lodha, Shri Vineet Kothari, learned counsel appearing on behalf of the petitioner has submitted the following in support of his claim and contends that the preliminary objections are liable to be rejected:-

(i) alternative remedy is not a bar when a question of constitutional or statutory vires of a provision of law is involved;

(ii) alternative remedy is not a bar where there is an authoritative pronouncement by a superior court on the question of law involved. Alternative remedy is no bar where the remedy is onerous or burdensome;

(iii) when the facts are not disputed and, therefore, no investigation on the facts is necessary;

(iv) where fundamental right is violated or principles of natural justice are

violated;

(v) when the authority issuing show cause notice totally lacks jurisdiction.

(vi) Alternatively, it was pleaded by Shri Vineet Kothari that the present cases having been taken up for final hearing, the preliminary objections cannot be sustained and the matter is liable to be decided on merits. Admitted matters cannot be dismissed on the ground of availability of alternative remedy at a later stage.

(7). I would deal with the last objection of Shri Vineet Kothari first. The question as to whether the matter or a writ petition already admitted on final hearing can be dismissed on the ground of existence of alternative remedy or not is no longer *res Integra* in so far as this Court is concerned. I am in respectful agreement with the views expressed by a Division Bench of this Court in *Laxman Singh Verma vs. State of Rajasthan & ors.* (2). In this case, it has been specifically observed that even after admission of writ petition *ex-parte*, it is open to respondents to resist the writ petition on all available grounds including ground of maintainability of petition on the ground of efficacious alternative remedy available under Statute. I am in respectful agreement with the views expressed by the Division Bench judgment and is also binding on this Court. This judgment was delivered on 5.11.99. Thereafter another Division Bench of this Court took up on a reference made by Justice Dr. B.S. Chauhan by his order dated 24.7.97 whereby he has specifically referred the question as to whether the cases pending since 1985 can be dismissed on the ground of alternative remedy being available. It came up for adjudication before a Division Bench of this Court on 1.8.2000 and relying on *Gopi.Chand Teli vs. State of Rajasthan* (*supra*), judgment of this Court as also the decision of the Supreme Court in *Sumedico Corporation* and another *vs. Regional Provident Fund Commissioner* (3) look the view that petitions pending final hearing can be dismissed on the ground of existence of alternative remedy relegating the party to alternative remedy. I am in respectful agreement with the view expressed in this case also. It will thus be seen that two different Division Benches, both of which are binding on me, have taken the view that where alternative remedy exists merely because the matter is admitted, it need not be heard on merits only and can be dismissed for existence of alternative remedy. In so far as this Court is concerned, therefore, the question is no longer *res integra* and need no further consideration by me. I reject the contention of Shri Vineet Kothari in this regard.

(8). That takes me to the rival contentions as illustrated by different decisions of different courts and the Supreme Court of India. I have to undertake adjudication of vital questions framed above. In order to determine as to whether alternative remedy in the circumstances is a bar or not, it would be better to notice different provisions on alternative remedy as provided in sections 84, 85 and 86 of the Act.

"84. Appeal to the appellate authority, (1) Subject to the provisions of section

88, an appeal against any order of an Assistant Commissioner, a Commercial Taxes Officer, an Assistant Commercial Taxes Officer or Incharge of a checkpost shall lie to the appellate authority.

(2) The appeal shall be presented within sixty days of the date on which the order sought to be appealed against is communicated; but the appellate authority may admit an appeal even after the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(3) Notwithstanding anything contained in sub-section (4) of section 42, no appeal under this section shall be entertained unless it is accompanied by a satisfactory proof of the payment of tax or other amounts admitted by the appellant to be due from him or of such instalment thereof as might have become payable, or twenty per cent of the tax or other amounts assessed, whichever is higher, but the appellate authority may, for reasons to be recorded in writing waive or relax the requirement of depositing of twenty per cent of the amount of disputed demand.

(4) Notwithstanding that an appeal has been preferred to the appellate authority, the tax or other sum shall, subject to the provisions contained in sub-sections (4) and (5) of section 42 be paid in accordance with the order against which an appeal has been preferred.

(5) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(6) The following shall have the right to be heard at the hearing of the appeal :

(a) the appellant, either in person or by the authorised representative;

(b) the authority or officer against whose order the appeal has been preferred either in person or by a representative.

(7) The appellate authority may, before disposing of any appeal make such further enquiry as it thinks fit, or may direct the assessing authority or the officer against whose order appeal has been preferred to make further enquiry and report the result of the same to the appellate authority and in disposing of the appeal the said authority may,-

(a) in the case of an order of assessment, interest or penalty.

(i) confirm, enhance, reduce or annul the assessment, interest or penalty; or

(ii) set aside the order of assessment, interest or penalty and direct the assessing authority to pass fresh order after such further enquiry as may be directed; and

(b) in the case of any other order, confirm, cancel, vary or remand such order.

(8) The appellate authority shall send a copy of the order passed by it to the

appellant, the assessing authority, the Deputy Commissioner (Administration) concerned and the Commissioner.

85. Appeal to the Tax Board.-(I) An appeal shall lie to the Tax Board against.

(a) an order of the State Level Screening Committee or the District Level Screening Committee passed under the Incentive Schemes or Deferment Schemes notified u/s 15 or under sub-section (3) of section 25;

(b) an order passed by the Commissioner with regard to determination of a disputed question u/s 40 or in any proceeding in exercise of his revisional powers u/s 87;

(bb) an order passed by the Commissioner or a Deputy Commissioner (Administration) under sub-section (2) of section 30; and

(c) an order passed by an appellate authority.

(2) Any person aggrieved by any order referred to in clauses (a), (b), (bb) and (c) of sub-section (1), may file an appeal before the Tax Board within ninety days of the date on which the order sought to be appealed against is communicated to him in writing.

(3) Notwithstanding anything contained in sub-section (2), the Commissioner or a Deputy Commissioner (Administration) Authority specially or generally by the Commissioner may, if aggrieved by any order referred to in clauses (a), (b) and (c) of sub-section (1), direct any officer or Incharge of a check-post to file an appeal before the Tax Board and such officer or Incharge shall file such appeal under his signatures within one hundred and eighty days of the date on which the order sought to be appealed against is communicated in writing to the Commissioner or the Deputy Commissioner.

(4) In an appeal filed by a dealer u/cl. (a) of sub-section (1) against an order of refusal of the benefit of exemption from tax or deferment of tax, the Commissioner shall be a necessary party as respondent.

(5) The respondent may, on receipt of notice that an appeal against an order referred to in sub-section (1) has been preferred by the appellant, notwithstanding that he may not have appealed against such order, within one hundred and twenty days in the case of an officer of the Commercial Taxes Department and within sixty days in the case of a dealer, of receipt of the notice, file a memorandum of cross-objections verified in the prescribed manner, against any part of the said referred order and such memorandum shall be disposed of by the Tax Board as if it were an appeal within the time specified in sub-section (2) or (3).

(6) The Tax Board may admit an appeal or permit the filing of memorandum of cross-objections after the expiry of the limitation provided in sub-sees. (2), (3) and (5), if it is satisfied that there was sufficient cause for not presenting the same within that limitation.

(7) An appeal to the Tax Board shall be made in the prescribed form and shall be verified in the prescribed manner.

(8) The Tax Board, during the pendency of an appeal before it, shall not stay any proceeding but it may, on an application in writing from the dealer, stay the recovery of the disputed, amount of tax, fee, interest or penalty or any part thereof on the condition of furnishing adequate security to the satisfaction of the assessing authority; and the amount found ultimately due shall be subject to interest from the date it became first due, in accordance with the provisions of this Act.

(9) Notwithstanding that an appeal against an order has been preferred to the Tax Board, the tax, fee, interest or penalty shall be paid in accordance with the order against which appeal has been preferred, unless recovery of such tax, fee, interest or penalty has been stayed by the Tax Board.

(10) The Tax Board shall, with the previous sanction of the State Government, make, by notification in the Official Gazette, regulations consistent with the provisions of this Act and the rules made thereunder for regulating its own procedure and the procedure of the benches thereof in all matters arising out of the exercise of its powers or the discharge of its functions; however, until the regulations are made, the Tax Board shall, subject to the provisions of this Act and the rules made thereunder, have power to regulate its own procedure and the procedure of the benches thereof in all matters arising out of the exercise of its powers and discharge of its functions.

(11) The Tax Board shall, after giving both the parties to the appeal an opportunity of being heard, pass such order thereon as it thinks fit and send a copy thereof to the appellant, the assessing authority, the authority whose order was appealed against and the Commissioner.

86. Revision to the High Court.- (1) Any dealer aggrieved by an order passed by the Tax Board under sub-section (11) of section 85 or under sub-section (1) of section 37, may, within ninety days from the date of service of such order, apply to the High Court in the prescribed form accompanied by the prescribed fee, for revision of such order on the ground that it involves a question of law.

(2) The Commissioner may, if he feels aggrieved by any order passed by the Tax Board under sub-section (11) of section 85, or under sub-section (1) of Sec. 37 direct any officer or Incharge of a check-post to apply to the High Court for revision of such order on the ground that it involves a question of law; and such officer or Incharge of a check-post shall make the application to the High Court within one hundred and eighty days of the date on which the order sought to be revised is communicated in writing to the Commissioner.

(3) The application for revision under sub-section (1) or sub-section (2) shall state the question of law involved in the order sought to be revised, and the High Court may formulate the question of law in any form or allow any other question

of law to be raised.

(4) The High Court shall after hearing the parties to the revision, decide the question of law stated to it or formulated by it, and shall thereupon pass such order as is necessary to dispose of the case.

(5) Any person feeling aggrieved by an order passed under sub-section (4) may apply for a review of the order to the High Court and the High Court may make such order thereon as it thinks fit."

(9). There are appropriate provisions under the Rajasthan Sales Tax Act itself providing for issuance of show cause notice for every action the Department chooses to take, which is likely to result in penal consequences in relation to an assessee. Looking to the entire scheme of the Act, it will, therefore, be seen that the Act provides a code in itself that provides effective and complete remedy and the provisions of the taxing statute beginning with show cause notice, grant of adequate opportunities to meet the cause mentioned in the notice and finally making of the order then providing a hierarchy of appeal or revision against possible error of fact and law, which according to the assessee, causes injustice to him. Care is taken by these provisions of embodying the basic principles of natural justice and obedience of those principles is made statutorily necessary by these provisions. It is in light of these provisions that the questions referred to above regarding alternative remedy is liable to be examined.

(10). In my opinion, it will be better that the entire law in this regard as enunciated earlier is recapitulated so that the controversy can be set at rest at least in so far as the High Court of Judicature for Rajasthan and the State of Rajasthan is concerned.

(11). As early as 1953, a Constitution Bench of the Supreme Court in *The State of Bombay and another vs. The United Motor (India) Ltd. and others* (4), laid down that a Court will not issue a prerogative writ when an adequate alternative remedy was available does not apply where a party has come to the Court with an allegation that his fundamental right had been infringed and sought relief under Art. 226 of the Constitution of India. It will be seen from the ratio of this case decided by a Constitution Bench of the Supreme Court of India that the basic principle or the rule is that a court will not issue a prerogative writ when an adequate alternative remedy is available and it has carved out an exception to this general rule will not apply where breach of fundamental right is alleged and relief claimed therefor.

(12). This decision was again followed by another Constitution Bench of the Supreme Court of India in the case of *Himmatlal Harilal Mehta vs. State of Madhya Pradesh & others* (5), arising from Nagpur High Court (as it then was) under the provisions of the C.P. and Berar Sales Tax Act. Following the dicta in the case of *The State of Bombay vs. United Motors (India) Ltd. & others* (supra) (case arising under the Bombay Sales Tax Act), it was observed by the Constitution Bench as under: -

"Moreover, since the remedy provided by the C.P. and Berar Sales Tax Act is of an onerous and burdensome character and before the assessee can avail of it he has to deposit the whole amount of the tax, such a provision can hardly be described as an adequate alternative remedy."

The ratio of this judgment, as I understand, is, therefore, that the principle of not issuing a prerogative writ when an adequate alternative remedy is available may not be implemented with full vigour in cases where the alternative remedy provided under the statute is very onerous and burdensome in character making it very difficult for [the assessee to take recourse to that remedy. In effect, the Constitution Bench of the Supreme Court of India spelt out another exception to the rule stated above. It would be better to note at this stage that under the Act, the requirement is of deposit of only 15% and even that can be waived or postponed by the appellate authority.

(13). In my opinion, in relation to taxation statutes, the law of existence of alternative remedy stands concluded by a judgment of the Supreme Court of India in a Five Judge Bench reported in *Thansingh Nathmal & others vs. The Superintendent of Taxes, Dhubri and others* (6). The Supreme Court observed as under:-

"The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct, errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petitioner under Art. 226 of the Constitution the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."

In my opinion, the aforesaid observations of the Hon^{ble} Supreme Court of India explicitly summarise the law on the point of alternative remedy being followed. It is stated that observance of alternative-remedy is the rule and this rule cannot be deviated from unless the alternative remedy is unduly onerous or totally

inefficacious. The Supreme Court of India categorically observed in the aforesaid decision that the " High Court will not normally permit a petitioner under Art. 226 to bypass the machinery created by the statute and will leave the party applying to it to seek resort to the machinery so set up.

(14). In *Shyam Kishore and others vs. Municipal Corporation of Delhi and another* (7), the Supreme Court of India has held that where the appellate provision becomes operative on deposit of tax appealed against, it is a provision which envisages the authority to adjudicate upon the dispute raised on such deposit being made but the appeal cannot be heard or disposed of without pre-deposit of the disputed tax. The Supreme Court considered the constitutional validity of the provisions of s. 170(b) of the Delhi Municipal Corporation Act. According to the ratio of this case, therefore, even a provision of appeal requires deposit of the amount of tax assessed is not unconstitutional and assessee is liable to make the deposit.

(15). In *Vijay Prakash D. Mehta and Jawahar D, Mehta vs. Collector of Customs (Preventive), Bombay* (8), the Supreme Court laid down that a right of appeal under a statute can be conditional one. The Supreme Court has in this case observed as under:-

"Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications, The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. It is not the law that adjudication by itself following the rules of natural justice would be violative of any right-Constitutional or statutory -without any right of appeal, as such. If the Statute gives a right to appeal upon certain conditions, it is upon fulfilment of those conditions that the right becomes vested and exercisable to the appellant."

It will, therefore, be seen that statutory right can be conditional and if the conditions are not onerous or very difficult for the assessee he must follow the statutory remedy before recourse can be taken to a writ petition.

(16). In the case of *U.P. Financial Corporation and others vs. Naini Oxygen & Acetylene Gas Ltd. and another* (9), the Supreme Court observed that while exercising jurisdiction under Art. 226 of the Constitution of India in commercial matters, decision of the body authorised to decide, should not normally be interfered with by court. The Hon'ble Supreme Court has observed that the High Court should not have stepped in and substituted its judgment for the judgment of the Corporation which should be deemed to know its interests better whatever the sympathies the Court had for the prosperity of the Company. From the ratio of this decision, it flows as a principle of law that the Sales Tax Authorities functioning under the Sales Tax Act are best suited to decide the matters arising under the Act and the High Court should not normally interfere with such matters. To put in other words, where the Departmental authority deems it fit to require an assessee to show cause why a particular action should not be taken

against it, the court should not interfere at the initial stage and prevent an enquiry by an authority competent to hold the enquiry.

(17). The Hon^{ble} Supreme Court of India in U.P. Jal Nigam and another vs. Nareshwar Sahai Mathur and another (10), has observed in relation to alternative remedy as under:-

"When a statutory Tribunal was constituted specially to look into the grievances of government servants, it is statutory obligation on the part of such government servants, first to avail themselves of the statutory remedy. In case, they are aggrieved against the order passed by the Tribunal, the remedy under Article 226 is always available to them. Under these circumstances, when the two Division Benches had rightly declined to entertain the writ petitions and directed the parties to avail themselves of the statutory remedy, another Division Bench was wholly unjustified in entertaining the writ petition under the impugned order and directing its early disposal."

These observations of the Hon^{ble} Supreme Court of India quoted above are in my humble opinion in regard to High Court, which has a Bench. Decisions of the High Court are of the Court and not of any particular Bench thereof and discipline requires that they are scrupulously followed at least by the High Court whether at the principal seat or at the Bench. Therefore, where a statutory alternative remedy is available, it should be considered as such and should not be lightly ignored by the courts particularly when coordinate Benches have in similar circumstances required the litigant to persuade the alternative remedy.

(18). In a very recent decision, the Supreme Court has held that the Constitutional Court should insist upon the party to avail of an alternative remedy instead of invoking the extraordinary writ jurisdiction of the Court. The observations of the Supreme Court of India in the case of State of Himachal Pradesh vs. Raja Mahendra Pal & others (11), should be considered in extenso, which are as under:-

"The learned counsel appearing for the appellant has vehemently argued that the writ petition filed was not maintainable as the High Court was not justified in entertaining the same and consequently granting the relief to the respondent No.1. The rights of respondent No. 1, if any, are stated to be based upon a contract for which he was obliged to avail of the alternative efficacious remedy of filing a suit either for the recovery of the money or for rendition of accounts. It is contended that the discretionary powers vested in the High Court under Article 226 of the Constitution could not have been exercised in the facts and circumstances of the case. Though, we find substance in the submission of the learned counsel for the appellant, yet we are not inclined to allow the appeal and dismiss the writ petition of respondent No. 1 only on this ground. It is true that the powers conferred upon the High Court under Article 226 of the Constitution are discretionary in nature which can be invoked for the enforcement of any fundamental right or legal right in view of the existence of efficacious alternative

remedy. The Constitutional extraordinary writ jurisdiction of the Court. This does not however debar the relief to a citizen under peculiar and existence of alternative efficacious remedy. The existence of the special circumstances are required to be noticed the instant case, the High Court did not notice any special circumstance which could be held to have persuaded it to deviate from the settled proposition of law regarding the exercise of the writ jurisdiction under Article 226 of the Constitution. For exercise of the writ jurisdiction, the High Court pressed into service the alleged fundamental right to found to have been violated by not making him the payment of the amounts claimed in the writ petition. It is true that Article 21 of the Constitution is of utmost importance, violation of which, as and when found, directly or indirectly, or even remotely, has to be looked with disfavour. The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under Article 21 of the Constitution cannot be so widely construed which may result in defeating the purpose sought to be achieved by the aforesaid Article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sorts of claim relating to the legal or contractual rights of the Parties completely ignoring the person approaching the Court and the alleged violation of the said right. The High Court appears to have adopted a very generous, general and casual approach in applying the right to livelihood to the facts and circumstances of the case apparently for the purpose of clothing itself with the power and jurisdiction under Article 226 of the Constitution. We are sure that if the High Court had considered the argument in the right perspective and in the light of various pronouncements of this Court, it would not have ventured to assume jurisdiction for the purposes of conferring the State largess of public money, upon an unscrupulous litigant who preferred his claim on his proclaimed assumption of being being as important as the Government of the State and equal thereto. Despite holding that the High Court had wrongly assumed the jurisdiction in the facts of the case, as earlier noticed, we are not inclined to dismiss the writ petition of the respondent No. 1 on this ground at this stage because that is likely to result in miscarriage of justice on account of the lapse of time which may now result in the foreclosure of all other remedies which could be availed of by the alternative remedies available to the respondent admittedly not being efficacious at this stage has persuaded us to decide the claim of the respondent on merits. ,

From the above quoted observations, it will be seen that the High Court should not take up a writ petition directly when alternative remedy is provided unless there exist special circumstances which can persuade the High Court in deviating from such proposition of law regarding exercise of writ jurisdiction under Art. 226. In this decision, it is observed in the last four lines quoted above that the Supreme Court did not relegate the party to the existence of alternative remedy after following the requirement to do so solely on the ground that at the stage before the Supreme Court of India, relegation of party to the alternative remedy was not considered efficacious. In the present case, we are at the stage where

only a show cause notice is issued. An appeal as statutorily provided can be filed. As I understand, the dicta of the Supreme Court of India in the above decision, on which reliance was also placed by Shri Kothari, the learned counsel for the petitioner, is that following of the alternative remedy is the rule, exception being existence of special circumstances and inefficacy of the alternative remedy.

(19). Yet another judgment of the Supreme Court of India, which, in my opinion, clinches the issue in this case regarding existence of alternative remedy. The Supreme Court in *Titaghur Paper Mills Co. Ltd. and another vs. State of Orissa and another* (12), observed as under: -

"In the instant case against the order of assessment made by Sales Tax Officer under the Orissa Sales-tax Act the petitioners, assesseees, can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-s. (1) of S. 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under Sub-s. (3) of S. 23, and then ask for a case to be stated upon a question of law for the opinion of the High Court under S. 24. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Art. 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."

From the above quoted observations of the Supreme Court, it will be seen that according to the Hon'ble Supreme Court of India, it is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. It will be noted from the judgment that these observations were made after the case law on the point was discussed. Then their Lordships of the Supreme Court of India proceeded to deal with the provisions of the Sales Tax Act from Orissa State.

(20). Yet another decision of the Hon'ble Supreme Court of India, which may be noticed with due care and must be scrupulously observed as the appellate Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. and others* (13). The Supreme Court observed as under:-

"An. 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 Art. 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. The Supreme Court can take judicial notice of the

fact that the vast majority of the petitions u/Art. 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice needs to be strongly discouraged."

Here the Supreme Court of India has observed that alternative remedy must be availed except where it is entirely ill-suited to meet the demands of extraordinary situations or where the constitutional vires of the statute itself are challenged or where it is necessary for prevention of public injury or vindication of public justice. It was observed by the Supreme Court then that the Court must have good and sufficient reason to bypass the alternative remedy provided by the statute and then observed "Surely matters involving the revenue where statutory remedies are available are not such matters". At the cost of repetition, I would like to quote with emphasis the following observations of the Supreme Court quoted supra:-

"The Supreme Court can take judicial notice of the fact that the vast majority of the petitions under Art. 226 of the Constitution" are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice needs to be strongly discouraged."

I have, therefore, quoted the above observation twice solely to emphasise that the law laid down by the Supreme Court in this regard, as observed, is the rule and the exceptions thereto have been well-defined and settled by the Supreme Court of India. The present case certainly does not come under any of the exceptions enumerated hereinabove.

(21). The Rajasthan High Court has way back in 1957 deciding in the case of Ramniranjan Kedia vs. The Income Tax Officer "A" Ward, Udaipur and others (14), held that where appeal u/s 34 of the Income Tax Act is available, the High Court under Article 226 of the Constitution of India should not interfere in the matter.

(22). In M/s. Bhanvvarlal Binjara vs. A.C.T.O., Jodhpur (15), this Court held that the Rajasthan Sales Tax Act has set up a complete machinery and a hierarchy of tribunals where the question raised can be agitated and hence, there is no reason to permit the petitioner to by pass the remedy provided under the Act.

(23). In the case of Kota Bux Mfg. Co. vs. State of Raj. (16), this Court held while dealing with notice u/S. 12 of the Rajasthan Sales Tax Act, 1954 that merely because a question of law is raised, the petitioner is not entitled to bypass the remedy of appeal.

(24). In the case of Lodha Fabrics & another vs. State of Rajasthan (17), it was held by this Court that whether caustic soda used by the petitioner was a part of manufacturing process or a raw material for dyeing and printing was essentially a question of fact and dismissal of the writ petition by the learned single Judge on the ground of availability of alternative remedy was proper.

(25). A Division Bench of this Court in M/s Orex India (P) Ltd. vs. The State of Rajasthan & another (18), decided on 27.4.2000 considered the constitutional validity of 5.2(39) of the Rajasthan Sales Tax Act, 1994 and having found it valid, relegated the parties to the remedy of appeal. Thus, affirming the continuous view of this Court that alternative remedy under the provisions of the Sales Tax Act should be followed and the writ petition should not be directly entertained.

(26). In the case of Sumedico Corporation and another vs. Regional Provident Fund Commr. (19), the Supreme Court in its decision has gone to the extent of relegating the parties to alternative remedy of appeal when the alternative remedy was not in existence when the petition was entertained by the High Court and was introduced during the pendency of the appeal before the Supreme Court against the decision of the High Court. The dicta of this Court is, therefore, very clear that whenever there is an alternative remedy existed, for glaring exceptions the alternative remedy must be followed.

(27). From the above discussion on the face of the case law laid down by the Supreme Court of India as also by this Court, the position of law as I understand which emerges from these decisions is that following of alternative statutory remedy is the rule which should be strictly observed. It can be deviated from only when the well-defined exceptions as enunciated by the Supreme Court of India exist. The rule is following of the alternative remedy. The exceptions are: (i) infringement of fundamental right granted by Part III of the Constitution of India; (ii) constitutional validity of any statute is under challenge; (iii) a statutory provision is considered outside the legislative competence of the Legislature making it; (iv) vindication of public right; (v) prevention of injury to public at large.

(28). Keeping in view these exceptions, therefore, the present petitions will have to be examined for determining whether there are circumstances for allowing by passing alternative remedy of appeal. In these petitions, no fundamental right is infringed. No such infringement is alleged and consequently, first exception quoted above, does not exist.

(29). The second exception also does not exist as constitutional validity of any - provision of the Rajasthan Sales Tax Act, 1994 is not challenged.

(30). The third exception does not exist as none of the provisions of the Rajasthan Sales Tax Act, 1994 is questioned as outside the legislative competence of the Rajasthan Legislature.

(31). The alternative remedy of appeal, is neither very Onerous nor wholly ill-suited. It will be seen from the decisions of the Supreme Court that the condition to deposit is not always onerous. In the present case, the condition of deposit of tax for preferring appeal under the Rajasthan Sales Tax Act, 1994 is of 15% only and even that can be waived by the Appellate Authority. It certainly cannot, in the circumstances, be termed as "onerous remedy". This exception also does not, therefore, exist in the present case.

(32). There is no question of any public injury being prevented in the present case. No injury whatever will be caused if the petitioners are relegated to alternative appeal. In fact, grievous public injury may be caused if the petitioners are permitted to bypass or short circuit the alternative remedy as it may result in great loss of revenue or loss of remedy to the State.

(33). There is no question of prevention of any public injury nor is it necessary for justice to public at large that the petitioners should be allowed to by pass the alternative remedy. His worthwhile to note in my opinion, that less than 1% of the population is required to pay sales tax. The requirement to pay sales tax -is not faced with any constitutional problem and hence, in the circumstances,,it is not at all necessary to permit by passing of the effective alternative remedy.

(34). As a result of the aforesaid discussion, I am firmly of the view that unless exceptions as enumerated in the foregoing paras exist as will be established by the pleadings of the parties, this Court would not exercise its jurisdiction and permit bypassing of statutdry alternative remedy. I, therefore, dismiss these petitions, relegate the parties to the alternative remedy of reply to the show cause notice and then preferring appeal etc. as statutorily provided. Interim relief, if any granted, stands vacated.