(1999) 03 KAR CK 0058

In the Karnataka High Court

Case No : Writ Petition No. 8890 of 1999

M/s. Larsen and Toubro Limited, Mangalore Cement Unit, Panambur, Mangalore — APPELLANT

Vs

Additional Deputy Commissioner of Commercial Taxes, Assessment-i, West Zone, Mangalore and Another — RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 28A(2)

Citation : (2000) 48 KarLJ 222

Hon'ble Judges : V. K. Singhal, J

Judgement

V.K. Singhal, J.-Petitioner is aggrieved by the action of the respondents in issuing Form 39. It is submitted by the learned Counsel for the petitioner that in spite of the fact that there is no legal and valid demand against the petitioner, issue of forms has been withheld. Reliance is placed on the judgment in the case of M/s. Dabur India Limited and Another v State of Uttar Pradesh and Others, AIR 1990 SC 1814, wherein it was observed as under:

"Before we part with this case, two aspects have to be adverted to - one was regarding the allegation of the petitioner that in order to compel the petitioners to pay the duties which the petitioner contended that they were not liable, the licence was not being renewed for a period and the petitioners were constantly kept under threat of closing down their business in order to coerce them to make the payment. This is unfortunate. We would not like to hear from a litigant in this country that the Government is coercing citizens of this country to make payment of duties, which the litigant is contending not to be leviable. Government, of course, is entitled to enforce payment and for that purpose to take all legal steps but the Government, Central or State, cannot be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make. If any money is due to the Government, the Government should take steps but not take extra-legal steps or manoeuvre. Therefore, we direct that the right of renewal of the petitioner of licence must be judged and attended to in accordance with law and occasion not utilized to coerce the petitioners to a course of action not warranted by law and procedure. Secondly, in a situation of this nature, we are of the opinion that the Government should consider feasibility of setting up of a machinery under a Council to be formed under Article 263 of the Constitution to adjudicate and adjust the dues of her respective Governments. In these peculiar facts, it appears that the dispute is under two different Central legislations and under one the State authorities will realise and impose the taxes on finding on certain basis and under the other the same transaction may be open to imposition by Central Government authorities on a particular view of the matter. In such a situation, how and wherein the refund should be made of any duty paid in respect of part of a transaction to one of the authorities, the State or the Centre, to be adjusted should be the subject-matter of a settlement by the Council to be set up under Article 263 of the Constitution. This is a matter on which we draw the attention of the concerned authorities for examination because Section 3 of the 1955 Act and Section 3 of the 1944 Act may overlap similar transaction in certain cases".

2. Arguments of the learned Counsel for the parties have been heard.

There are provisions under the Act by which the issue of Form 39 could be withheld. It is stated by the learned Counsel for the petitioner that there is no demand outstanding. On the other hand, learned Government Advocate has pointed out that the notice have been issued for provisional assessment. At this stage I need not go to the controversy as stated by the learned Counsel. The Assessing Authority shall pass the order on the application submitted by the petitioner within 10 days from the date of submission of copy of this order in accordance with law.