(1989) 06 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 7880 of 1989 (O and M)

M/s. Sham Sunder and others APPELLANT

Vs

Assessing Authority, Hissar RESPONDENT

Date of Decision : 23-06-1989

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 40

Citation : (1989) 06 P&H CK 0034

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : R.P. Sawhney, for the Appellant;

Final Decision : Allowed

Judgement

G.R. Majithia, J.—The Petitioner has challenged the correctness of the order passed by Respondent No. 2 u/s 40 of the Haryana General Sales Tax Act, 1973 (for short the Act) in this petition.

2. The Petitioner has an equally efficacious remedy by way of an appeal u/s 39 of the Act. When a right or liability is created by a statute which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. The question arising for determination depends upon appreciation of evidence. We decline to interfere in the matter until all the statutory remedies are exhausted. It will be useful to refer to the dictum laid down by the Apex Court in Titaghur Paper Mills Co. Ltd. and Anr. v. State of Orissa and Anr. 1983 U.J. (S.C.). 503, which reads as under:

Under the scheme of the Act, there is a hiererchy of authorities before which the Petitioners 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-section (1) of Section 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-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court u/s 24 of the Act. 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 Article 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. This rule was stated with great clarity by Willes, J. in Wolverhampton New Water Works Co. v. Hawkesford (1859) 6 CB (NS) 336 at p. 356, in the following passage:

There are three classes in which a liability may be established founded upon statute. * * * * But there is a third class, viz, where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it * * * the remedy provided by the statute must be followed, and it is not competent to the party to pursue course applicable to cases of second class. The form given by the statute must be addopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in Nevile v. Londan Newspaper Ltd. (1919) AC 368 and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. (1935) AC 532 and AIR 1940 105 (Privy Council) : It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petition in limine.

3. The learned Counsel for the Petitioner submitted that Section 25(5) of the Act is violative of Article 14 of the Constitution. He has not laid and foundation in the writ petition as to how the provisions are violative of Article 14 of the Constitution nor he could substantiate the same during the course of his arguments. We decline to interefere until all the statutory remedies are exhausted.