

(2013) 06 CHH CK 0030
In the Chhattisgarh High Court
Case No : Writ Appeal No. 214 of 2013

M/s. Sony India Private Limited and Another	APPELLANT
Vs	
State of Chhattisgarh and Others	RESPONDENT

Date of Decision : 18-06-2013

Acts Referred:

Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 — Section 2
Constitution of India, 1950 — Article 12, 226, 227

Citation : (2014) 44 GST 526 : (2013) 5 MPHT 47

Hon'ble Judges : Yatindra Singh, C.J;Pritinker Diwaker, J

Bench : Full Bench

Advocate : Neelabh Dubey, for the Appellant; Kishore Bhaduri, Additional Advocate General for the State, for the Respondent

Judgement

1. The main question involved in this case is,

Whether the power exercised by the Commissioner u/s 70 of the Chhattisgarh Value Added Tax Act 2005 (the Act) is quasi-judicial or administrative in nature.

It arises in this writ appeal against order of the single judge dated 21.02.2013 passed in WP(T)-102 of 2012 dismissing the writ petition of M/s. Sony India Private Limited (the Appellant) for quashing the order dated 21.02.2013 passed by the Commissioner u/s 70 of the Act.

THE FACTS

The Appellant is engaged in the business of selling a range of consumer audio, visual electronic products such as LCD TV, music system Digital Still Image Video Camera (the DSC) etc.

2. So far as the DSCs are concerned, the Appellant imports the DSCs and sells them in the country.

3. The Commercial Tax Department, Chhattisgarh (the Department) started charging tax on the sale of DSCs under residual entry namely entry I of part-IV

of schedule-II framed u/s 15 of the Act.

4. The Appellant claims that the DSC is an IT product and covered under entry 63 of part-II of schedule-II rather than residual entry. It filed an application before the Commissioner, Commercial Tax, Raipur (the Commissioner) u/s 70 of the Act to determine rate of tax on the DSC.

5. After affording opportunity to the Appellant, the Commissioner by his order dated 17.10.2012 held that the Appellant was liable to pay duty under residual entry-1 part-IV of schedule-II. This was held in view of the order dated 23.05.2012 passed in case No.-160 of 2011 of M/s. Bharti Wall Mart Private Limited.

6. Aggrieved by the aforesaid order, the Appellant filed WP(T)-102 of 2012. It was dismissed on 21.02.2013. Hence, the present writ appeal.

SUBMISSION OF THE PARTIES

7. We have heard counsel for the parties.

8. The counsel for the Appellant submits that:

? India was a signatory to a declaration in pursuance of ministerial conference on trade in information technology products held from 9-13 December, 1996 in Singapore (the Declaration). The DSCs are mentioned in attachment A annexed to the Declaration and are included as the IT products;

? The aforesaid fact has also been recognised by the Government of India by issuing a notification-153/93-Cus, dated 13.08.1993 as amended by notifications-101/95-Cus, dated 26.05.1995; 33/1997-Cus, dated 01.04.1997; 55/99-Cus, dated 07.05.1999; 71/2000-Cus, dated 22.05.2000; and 5/2007-Cus, dated 15.01.2007, where the DSCs are recognised as the IT products;

? Entry 63 part II of schedule-II of the Act is,

IT products including computers, telephones, mobile, handsets/cellular telephones and parts thereof, Teleprinter and Wireless equipment and parts thereof, DVD & CD.

It is an inclusive entry and should be read to include DSC.

9. Apart from raising objection on maintainability of the writ appeal, the counsel for the Respondents submits that:

? The order of the Commissioner u/s 70 of the Act is binding upon all the authorities mentioned in section 3 of the Act except when they are deciding the appeals;

? The order of the Commissioner is binding upon the Assessing Officers, but not in appeal or further proceeding against those orders;

? It is always open to the appellate or higher authority to take a different view, if

the law so requires in proceeding against assessment orders;

? The Appellant can very well take the previously mentioned objections in the proceeding against the assessment order;

? The Appellant has efficacious remedy available to it. It should not be permitted to short-circuit the assessment proceeding; and

? It is not a fit case to exercise writ jurisdiction under article 226 of the Constitution.

10. The submissions raised by the counsel for the parties are weighty and have substance. We would have considered them on merits, but are not doing so, as the writ appeal is not maintainable.

THE DECISION

11. Before we give our reasons for non-maintainability of the writ appeal, it is necessary to consider whether the Commissioner is performing quasi-judicial or administrative functions while deciding the question about rate of tax. Is his order administrative or judicial?

Commissioner is performing quasi-judicial function

12. The counsel for the Appellant submits that:

? In State of Kerala and Others Vs. M/s. Travancore Chemicals and Manufacturing Company and another, {1991 (112) STC 191 (SC)} (the Travancore-Chemicals case), the Supreme Court, while interpreting a similar provision has held such an order to be an administrative order;

? In the present case also, the order is an administrative order.

13. Section 70 (see Appendix-1) of the Act is titled "Determination of disputed questions". It permits a dealer to raise any question about rate of tax on any goods before the Commissioner in a prescribed manner after payment of prescribed fees. In case such a question is raised, the Commissioner is required to determine the rate of tax on such goods within six months, in accordance with the procedure that may be prescribed.

14. Under the Act, the State has also framed Chhattisgarh Value Added Tax Rules, 2006 (the Rules). The procedure, manner, and fee have been prescribed therein.

15. Rule 79 (see Appendix-2) of the Rules is titled "Procedure for determination u/s 70 of disputed questions". Sub-rule (1)(b) of rule 79 {79(1)(b)} of the Rules requires fee of Rs. 100/- to be deposited along with the application for determining the question.

16. Sub-rule (2) of rule 79 {79(2)} of the Rules provides detailed procedure for the determination of the question. It requires the application to be in duplicate;

state the facts relating to the goods in respect of which determination is sought; dealer's contention regarding the rate of tax; and the entry of the schedule under which goods are claimed to be covered.

17. Sub-rule (4) of rule 79 {79(2)} of the Rules empowers the Commissioner to make an enquiry and call for such additional information from the dealer as may be necessary and thereafter, determine the question after giving opportunity to the dealer.

18. The procedure prescribed under rule 79 of the Rules shows that the proceedings before the Commissioner are quasi judicial in nature; he exercises quasi judicial power and not administrative power.

19. In the Travancore-Chemicals case, the validity of section 59A of the Kerala General Sales Tax Act, 1963 (the Kerala Act) was involved. It empowered the state government to decide the question regarding rate of tax. In this case, the question was not whether any order was administrative or quasi judicial in nature but whether section 59A of the Kerala Act was ultra vires the Constitution or not. It is in this reference that the Supreme Court made a passing remarks that the order is an administrative order.

20. Apart from above, there is nothing to show that under the Kerala Act, the procedure was similar to the one as contemplated under rule 79 of the Rules. There is nothing to show that the order was to be passed after affording opportunity. It is because of the detailed procedure mentioned in rule 79 of the Rules that we have held that order to be quasi judicial in nature. In absence of such provision or procedure, the observations in the Travancore-Chemicals case cannot be made applicable here.

21. In Commissioner of Sales Tax, U.P., Lucknow Vs. Super Cotton Bowl Refilling Works, , interpretation of section 35 as contained in the UP Sales Tax Act, 1948 (the UP Act) was involved. It is similar to provision here except that the procedure was provided in the section itself.

22. In the Super-cotton case, the Supreme Court observed that the order passed by the Commissioner is quasi-judicial in nature. It is clear from the following observations:

It is difficult to accept the position that u/s 35 which empowers the Commissioner to determine disputed questions and the Commissioner under sub-section (2) after giving the parties opportunity of being heard, decides a question, his order can be called to be an administrative order. In our opinion, the very language of the Section which enjoins a decision by the Commissioner envisages that the decision is quasi-judicial or judicial and cannot be characterised as administrative.

23. In our opinion, the power exercised by the Commissioner is quasi-judicial in nature and not administrative.

Writ Appeal is not maintainable

24. u/s 70 of the Act, the power has been conferred upon the Commissioner to determine the rate of tax under a statute; he is also exercising judicial functions; there is also a lis between the parties as according to the Appellant the rate of tax is covered under entry 63 of part-II of schedule-II; whereas, according to the Department, it is covered by Entry I of Part-IV of Schedule-II of the Act.

25. Under sub-section (2) of section 70 {70(2)} of the Act, the decision of the Commissioner is final as no appeal or revision lies under the Act. It is also binding upon all the authorities mentioned in section 3 of the Act except when they are deciding the appeals. In our opinion, the Commissioner is a Tribunal within the meaning of Article 227 of the Constitution.

26. The fact that the Commissioner, while exercising power u/s 79 of the Act, is a Tribunal under supervisory jurisdiction of Article 227 of the Constitution, is also clear from the Supreme Court decision in Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others, .

27. In the Jaitla case, the facts were as follows:

? The services of a Headmaster or Teacher of the schools governed by Punjab Aided Schools (Security of Services) Act, 1969 (the Punjab Act) could not be dispensed with, without taking approval of the Deputy Commissioner. Thereafter, an appeal lay to the Commissioner;

? The services of a Headmaster and a Teacher were terminated and they filed the appeals, that were dismissed. They filed writ petitions before the Punjab and Haryana High Court challenging the orders;

? The High Court dismissed the writ petitions on the ground that they were not other authorities under article 12 of the Constitution though it was admitted that the Deputy Commissioner and the Commissioner were exercising quasi judicial functions.

28. The Supreme Court allowed the appeals in the Jaitla case and observed:

The High Court clearly overlooked the point that Deputy Commissioner and Commissioner are statutory authorities operating under the 1969 Act. They are quasi-judicial authorities and that was not disputed. Therefore, they will be comprehended in the expression "Tribunal" as used in Article 227 of the Constitution which confers power of superintendence over all courts and tribunals by the High Court throughout the territory in relation to which it exercises jurisdiction. Obviously, therefore, the decision of the statutory quasi-judicial authorities which can be appropriately described as tribunal will be subject to judicial review namely a writ of certiorari by the High Court under Article 227 of the Constitution.

29. In the present case, The writ petition was filed for quashing/setting aside the order passed by a Tribunal. It was essentially under supervisory jurisdiction of

the High Court under article 227 of the Constitution.

30. In SKS Ispat Limited Vs. Union of India and others (Writ Appeal-1006 of 2012, decided on 12.12.2012), a division bench of this Court has taken the view that it is not the heading of the writ petition, but substance of the order passed by the single judge is material. It is the order passed that determines whether the order was passed under Article 226 or 227 of the Constitution.

31. In the present case, the single judge after considering the submissions of the parties has dismissed the writ petition; substance of the order is under Article 227 and no power under Article 226 of the Constitution has been exercised.

32. In view of above and the proviso of sub-section (1) of section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, the writ appeal is not maintainable.

CONCLUSIONS

33. Our conclusions are as follows:

(a) While exercising power u/s 70 of the Chhattisgarh Value Added Tax Act, 2005, the Commissioner, exercises quasi-judicial power. His order is an order of a quasi-judicial authority and is not an administrative order;

(b) The writ appeal is against the order of the single judge in a writ petition to quash the order of a quasi-judicial authority. It is in substance under article 227 of the constitution;

(c) The writ appeal is not maintainable.

In view of our conclusions, the writ appeal is dismissed as not maintainable.

Appendix-1

Section 70 of the Chhattisgarh Value Added Tax Act, 2005 is as follows:

70. Determination of disputed questions--(1) If any question is raised by a dealer in respect of the rate of tax on any goods, the Commissioner shall, within six months from the date of receipt of the application made by the dealer for this purpose in the prescribed manner and on payment of such fee as may be prescribed, make an order determining the rate of tax on such goods in accordance with such procedure as may be prescribed.

(2) The Commissioner, if the circumstances so warrant, shall have the power to review any order passed under this section and pass such order as he deemed necessary:

Provided that,-

(i) no review of an earlier order shall be made unless a reasonable opportunity of being heard is given to the dealer who is likely to be adversely affected by the review, and

(ii) the Commissioner shall not reduce the rate of tax in review.

(3) Any order passed by the Commissioner under sub-section (1) and (2) shall have a prospective effect and shall be binding on the authorities referred to in Section 3 in all proceedings under this Act except appeals.

Appendix-2

Rule 79 of the Chhattisgarh Value Added Tax Rules, 2006 is as follows:

79. Procedure for determination u/s 70 of disputed questions-

(1) (a) Every dealer desirous of raising a question for determination of the rate of tax on any goods shall make an application to the Commissioner.

(b) Every dealer making such application shall deposit a fee of rupees one hundred and enclose with the application a copy of challan in form 34 in proof the payment of such fee.

(2) Every application made under clause (a) of sub-rule (1) shall,-

(i) be in duplicate;

(ii) clearly state the facts relating to the goods in respect of which determination is sought, that is to say, their description, the use to which the goods are put to, specification thereof, raw material used in the manufacture of such goods and give a detailed description of the process of manufacture of the goods in question;

(iii) be accompanied by a sample, a copy of the sale voucher, purchase order and purchase voucher, if any;

(iv) contain the dealer's contention regarding the rate of tax and the entry of the schedule by which the goods are claimed to be covered.

(3) Separate application shall be made for each of the goods in respect of which determination of the rate of tax is sought.

(4) On receipt of the application, the Commissioner shall, after making such enquiry and calling for such additional information from the dealer as he deems necessary and after giving the dealer an opportunity of being heard, pass an order determining the rate of tax in respect of the goods covered by the documents received with the application.

(5) A copy of the order passed under sub-rule (4) shall be served on the dealer.

HEADLINES

Commission u/s. 70 VAT Act exercises quasi judicial power.