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(2009) 11 GUJ CK 0118

In the Gujarat High Court

Case No : Special Civil Application No. 12260 of 2009

Prabhat Solvent Extraction Industries Pvt. Ltd. and Another — APPELLANT

Vs

Union of India (UOI), Secretary to Government of India and Another — RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A
Constitution of India, 1950 — Article 14, 19(1), 226

Citation : (2010) 34 VST 430

Hon'ble Judges : Rajesh H Shukla, J;K.A. Puj, J

Bench : Division Bench

Advocate : K.H. Kaji and Manish K. Kaji, for the Appellant; None, for the Respondent

Judgement

K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of india challenging the vires of Section 6A of the Central Sales Tax Act, 1956 to the extent that it makes it obligatory on the dealer to produce valid form F issued from the booklet obtained from the prescribed authority, failing which a deeming fiction is created that the transaction would be inter-State sale. The petitioner has also prayed for quashing of the said provision and also for declaration that the said provision is void and violating Articles 14 and 19(1) (g) of the Constitution of India.

2. Heard Mr. K. H. Kaji, learned senior advocate, appearing with Mr. Manish K. Kaji, learned advocate for the petitioner.

3. The petitioner has filed this petition after its Tax Appeal No. 1205 of 2009 is dismissed by this Court on July 30, 2009. Mr. Kaji has submitted that the said tax appeal was dismissed on facts. However, the question which is raised by the petitioner in the present petition has nothing to do with the said tax appeal. He has further submitted that prior to the insertion of the amended provision in Section 6A with effect from May 11, 2002, it was open to the dealer to prove

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without producing valid form F by other evidence that the transactions were consignment transactions and not inter-State sales. However, by virtue of the said amendment, it is now not open for the dealer to do so. He has also submitted that this question of vires of the amendment made in Section 6A has to be decided by the court.

4. Mr. Kaji further pointed out the decision of the apex court in the case of Ambica Steels Ltd. v. State of U.P. [2009] 24 VST 356, wherein it is held that "where the State within which the transferee was located did not issue F forms, it would be open to the assessing officer to complete the reassessment proceeding on its own merits after examining the transaction between the parties, keeping in mind the circumstances that the assessee was not in a position to obtain form F for no fault of his."

5. He has, therefore, submitted that the assessee should not be held liable for want of form F, if on the basis of other evidence in this regard, he is in a position to prove that the transaction in question is not inter-State sale, but it is only a transaction of consignment.

6. The issue raised by the petitioner in the present petition cannot be and should not be gone into by this Court in view of the peculiar facts of the case, as the tax appeal is already decided against the petitioner. Moreover, as per the submission of Mr. Kaji, the petitioner has already moved a review petition in the Tax Appeal on the basis of the decision of the apex court in the case of Ambica Steels Ltd. [2009] 24 VST 356. He has further submitted that against the order of the Tribunal under the Central Sales Tax Act, the appeal does not lie to this Court, but it lies before the Central Sales Tax Appellate Authority and the petitioner has already filed such appeal.

7. In this view of the matter, at present two different proceedings are already pending, one before this Court by way of a review petition and another by way of an appeal before the Central Sales Tax Appellate Authority. The court, therefore, does not entertain this petition. However, following the judgment of the apex court in the case of Ambica Steels Ltd. v. State of U. P. [2009] 24 VST 356, this Court is of the view that it is open for the petitioner to agitate this issue before the pending proceedings and establish its claim in absence of form F while leading other evidence to the effect that the transaction in question is not an inter-State sale, but it is merely a consignment.

8. With this observation, the petition is disposed of.

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