(2006) 05 PAT CK 0016

In the Patna High Court

Pradeep Pipe Stores APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2006) 3 PLJR 111 : (2008) 11 VST 336

Hon'ble Judges : J.N. Bhatt, C.J;S.N. Hussain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By invocation of the provision of Article 226 of the Constitution of India, the petitioner-firm has questioned the legality and validity of the impugned order of assessing authority for the levy of sales tax, assessment order, as well as, the demand notice, inter alia, contending that the assessment order and the resultant demand notice/order are illegal, without jurisdiction and in violation of the principle of natural justice.

2. The respondent-State has also filed counter-affidavit and has, inter alia, denied all the submissions made in the petition, contending that sufficient opportunities for hearing had been afforded but were not availed and the competent assessing authority has made the assessment order for the levy of sales tax in terms of the provisions of Section 17 of the Bihar Finance Act, 1981 for the relevant year 2000-01 and it is quite within the competence of the assessing authority and, therefore, it cannot be said to be without jurisdiction. It is further submitted that there is a provision for appeal u/s 45 of the said Act and this petition is not maintainable on that ground as there is alternative efficacious remedy available.

3. We have heard the learned Counsel for the parties. We have been taken through the relevant documentary evidence placed on record including the affidavit and the counter-affidavit. We have also considered the relevant

provisions of the Act and we would take up the last question raised on behalf of the respondent-State first.

4. The contention raised on behalf of the petitioner is that the impugned assessment order and the resultant demand notice/order are without jurisdiction. This contention may appear to be very captivating but not convincing and it may appear very alluring but not acceptable. Needless to mention that if the competent assessing authority once makes an assessment order and the party thereto is aggrieved, he has a right to appeal. In the present case, there is a provision in the Act. Section 45 of the Act provides for filing an appeal against the order of assessment for such demand and about which there is no dispute.

5. Though it is, prima facie, explicit from the affidavit-in-reply, filed by the assessing authority, who has passed the impugned assessment order that despite several opportunities having been given the petitioner-firm has not availed them. Without going into this aspect, what is relevant for the present to be considered and adjudicated upon is as to whether the impugned order can be said or could be characterised as without jurisdiction as submitted, to which our answer, positively, is in the negative. The assessing authority''s order impugned in this petition, could not be said to be passed by an authority having no jurisdiction. There may be an error of judgment, there may be misinterpretation of the provisions and there may be some doubtful conclusion of facts but these are the issues, which can be raised appropriately and in a better way before the appellate forum, which can go into them, unlike the present writ court, which can have only concern with the decision-making process and not the type, character or quality of the order under challenge. It is, therefore, on being pointed question asked to the learned Counsel appearing for the petitioner by us, the reply came that in order to avail the benefit of the appellate remedy, the petitioner would be required to pay requisite amount, in the present case 20 per cent by way of deposit before the appellate authority when there is no liability because the amounts have been paid. This is an ingenious submission. Whether liability arose or not or whether the impugned order of the assessing authorities is justified or permissible or not including the question whether there was an ex parte or by parte order can better be gone into on appreciation of facts by the appellate authority as statutorily provided u/s 45 of the Act.

6. It is the settled proposition of law that the writ court, by invocation of the powers under Article 226 of the Constitution of India, will be at loath when efficacious, alternative, statutory redressal is available to the assessee. It is in these context, without going into the merit of any issue, we are of the opinion that this Court should not interfere when efficacious, statutory alternative remedy is available. This petition, therefore, shall stand dismissed.

