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(2013) 04 P&H CK 0138

In the Punjab And Haryana At Chandigarh

Case No : CM No. 5145 of 2013 in/and CWP No. 3891 of 2013

Punjab Alkalies and Chemicals Ltd. APPELLANT

Vs

Municipal Council RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Municipal Act, 1911 — Section 84

Citation : (2013) 04 P&H CK 0138

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Arun Nehra, for the Appellant;

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—The present writ petition is directed against the demand notice for payment of house tax for the year 2012-13 appended at Annexure P-28 dated 28.8.2012, issued by respondent No. 1 alongwith house tax bills (Annexure P-30). When this matter came up for hearing on 21.2.2013, following order was passed by this Court:- Learned counsel for the petitioner, at the very outset, fairly states that the alternative remedy of statutory appeal is available to the petitioner, which has not been availed by it, before approaching this court.

In view of the above statement made by learned counsel for the petitioner, the present petition is ordered to be dismissed as withdrawn, with liberty to the petitioner to avail its alternative remedy, at the first instance.

Thereafter, Civil Misc. Application No. 5145 of 2013 was filed by the applicant-petitioner for recalling the above-said order dated 21.2.2013 and this application came up for hearing today.

2. Learned counsel for the applicant-petitioner submitted that the application may be allowed, the order dated 21.2.2013 may be recalled and the matter may

be decided on merits. Although, the stand taken by the applicant-petitioner in the application, was neither fair nor justified, yet the order dated 21.2.2013 is ordered to be recalled in the interest of justice, for decision on merits.

3. CM stands disposed of.

Main case

4. Learned counsel for the petitioner submits that the petitioner company was not liable to pay house tax, which was illegally assessed by the respondent-Municipal Council, under the provisions of Punjab Municipal Act, 1911 (''the Act'' for short). He further submits that the impugned house tax assessment was made contrary to the facts of the present case and also in violation of the relevant provisions of law because of which the impugned demand notice for payment of house tax issued, vide Annexure P-28 dated 28.8.2012 was liable to be set aside. He finally prays for allowing the writ petition and setting aside the impugned demand notice.

5. Having heard the learned counsel for the petitioner, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the instant writ petition is liable to be dismissed because the petitioner has got equally efficacious alternative remedy of statutory appeal. Admittedly, the remedy of appeal has not been availed by the petitioner before filing the present writ petition, because of which, no interference is warranted at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

6. A close perusal of the record would show that the petitioner had filed its statutory appeals at more than one times earlier also challenging the similar house tax assessments. Some of these appeals were allowed by the appellate authority by orders Annexures P-1 and P-2. As per Annexure P-32, petitioner has paid an amount of Rs. 4,51,614/- towards its liability for payment of house tax for the year 2012-13, vide cheque No. 462775 dated 17.9.2012. In this view of the matter, it seems that the petitioner is trying to bye-pass the equally efficacious alternative remedy of statutory appeal without any justified reasons. Having said that, this Court feels no hesitation to conclude that the petitioner is not entitled to invoke the writ jurisdiction of this Court without first availing the equally efficacious alternative remedy of statutory appeal.

7. It is neither the pleaded nor argued case on behalf of the petitioner that the impugned house tax bills have been issued all of a sudden. Petitioner has been rightly availing its remedy of statutory appeal earlier, which is clear from Annexures P-1 and P-2, besides some other orders available on the record including Annexure P-15. Further, during the course of hearing, learned counsel for the petitioner could not substantiate his arguments as to how the remedy of statutory appeal was not efficacious. Thus, the petitioner is not entitled to maintain the present writ petition, at this stage before approaching the appellate

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authority, at the first instance.

8. Learned counsel for the petitioner tried to raise an apprehension that petitioner may not get an appropriate relief at the hands of the appellate authority. However, there is no basis for such apprehension. As pointed out here-in-above, statutory appeal filed by the petitioner had earlier been allowed by the appellate authority, vide Annexures P-1 and P-2. In this view of the matter, the apprehension raised by the learned counsel for the petitioner is wholly misplaced. It is undisputed on record that Section 84 of the Act provides an appeal against the impugned assessment of house tax. Learned counsel could not give any reason much less cogent reasons thereof, as to why the petitioner was not ready to avail the remedy of appeal provided under the Act.

9. The view taken by this Court also finds support from the judgments of the Hon''ble Supreme Court in United Bank of India Vs. Satyawati Tondon and Others, and Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, besides a Division Bench judgment of this Court in J.M.P. Manufacturing and Company Vs. Union of India (UOI) and Others, . The Hon''ble Supreme Court, after referring to a plethora of judgments on this point, made the following observations in para 18 of United Bank of India''s case (supra), which can be gainfully followed in the present case:

While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters.

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10. Similarly, a Division Bench of this Court in M/s. J.M.F. Manufacturing Company''s case (supra) while referring to the judgments of the Hon''ble Supreme Court, observed in para 6 of the judgment, as under:-

The principle laid down in Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , has been reiterated in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, . The Supreme Court lamented on the practice of the High Courts to entertain writs and to pass orders of stay against the recovery of taxes and observed:-

Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. The Supreme Court can take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice needs to be strongly discouraged.

11. Reverting back to the facts of the present case, it is not in dispute that remedy o statutory appeal has been provided u/s 84 of the Act, which has not been availed by the petitioner before filing the present writ petition. Further, in the given fact situation of the instant case, discussed here-in-above, it is established on the record that the petitioner had been availing the alternative appeal of statutory appeal before the appellate authority, at earlier points of time. Learned counsel for the petitioner has failed to advance any argument to make out the instant one as an extraordinary case, wherein the petitioner may be permitted to bye-pass the alternative remedy of appeal provided under the Act.

12. Respectfully following the law laid down by the Hon''ble Supreme Court in United Bank of India''s case (supra), Whirlpool Corporation''s case (supra) and a Division Bench judgment of this Court in M/s. J.M.P. Manufacturing Company''s case supra, referred to above, it is held that the present one is not a fit case warranting interference at the hands of this Court, entertaining the present writ petition without relegating the petitioner to the equally efficacious alternative remedy of appeal.

13. No other argument was raised. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant writ petition is misconceived, bereft of any merit and without any substance, thus it must fail.

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No case for interference has been made out. However, it goes without saying that petitioner would be entitled to avail the alternative remedy of appeal, in accordance with law.

Resultantly, the present writ petition stands dismissed.

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