

(1982) 01 RAJ CK 0005
In the Rajasthan High Court
Case No : .C.W. Petition No. 1398 of 1981

Rajasthan Wool Processors

APPELLANT

Vs

Commercial Taxes Officer

RESPONDENT

Date of Decision : 15-01-1982

Acts Referred:

Central Sales Tax Act, 1956 — Section 8
Constitution of India, 1950 — Article 226

Citation : (1982) 50 STC 315

Hon'ble Judges : Dwarka Prasad, Acting C.J.; Mahendra Bhushan Sharma, J

Bench : Division Bench

Advocate : M.M. Vyas, for the Appellant; S.C. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard the learned counsel for the petitioner and the learned counsel for the revenue. Mr. M. M. Vyas, appearing for the petitioner, contended that two questions arise in this writ petition, namely :

(1) As to whether wool top, wool burrs, wool shoddy, wool noils, wool picking, wool carding, wool kutur, wool lepha and other wastes are all one commodity and are not separate from "raw wool" which is exempted from payment of Central sales tax and as such wool top and aforesaid commodities are not taxable to Central sales tax ?

(2) That the exemption in respect of wool top issued by the State Government from payment of Rajasthan sales tax is a general exemption and as such no Central sales tax is leviable on the turnover of the petitioner relating to inter-State sale of wool top and the provisions of Sub-section (2) (a) of Section 8 of the Central Sales Tax Act has been relied upon in support of this contention ?

2. The learned counsel appearing for the revenue submits that these objections can be taken by the petitioner before the appellate authority and that the writ petition should not be entertained at this stage as the appeals filed by the

petitioner against the assessment of Central sales tax are pending and all the objections which the petitioner desires to take in this writ petition can be urged before the appellate authority and would be decided by the said appellate authority.

3. The learned counsel for the revenue relied upon two decisions of their Lordships of the Supreme Court in support of his contention that it would not be proper for this Court to interfere at this stage in the matters of taxation when the appeals of the petitioner are pending consideration before the appellate authority. In *Jaipur Hosiery Mills (P) Ltd., Jaipur Vs. The State of Rajasthan and Others*, it was pointed out by their Lordships of the Supreme Court that the High Court should not proceed to decide that banyans and chad-dies are included in the term "hosiery products" and such a decision should have been left to the assessing authorities dealing with each individual case. Their Lordships also observed that the High Court should not go into that matter as it was for the assessing authorities to decide each case whether the goods which had been subjected to tax were hosiery products and the High Court should not have considered the matter in a petition under Article 226 of the Constitution. In *Delhi Cloth and General Mills Co. Ltd. v. R. R. Gupta* [1976] 38 STC 113 (SC) their Lordships of the Supreme Court while considering a decision of this Court made the following observations :

It is, therefore, difficult to find fault with the view of the High Court that there is no error apparent on the face of the record and that the taxing authorities should be left to determine whether the "tyre cord fabric" is more correctly capable of being described as a fabric or as merely cord pretending to pass off as a textile fabric. This is really a technical question. In any case, it is a question on which two views seem possible on apparent facts. And neither of the two views can be rejected outright as untenable. It requires careful consideration of the technical processes of manufacturing, of the composition of the "tyre cord fabric", and an evaluation of opinions of experts on the subject, to be able to decide the question satisfactorily. It may also require some examination of commercial usage and terminology or the language of the market in goods of this type. We, therefore, think that the High Court was right in not interfering with the decision of the taxing authorities at this stage.

4. In that case also the writ petition was filed in this Court against the assessment order passed by the Commercial Taxes Officer holding that the rayon tyre cord fabric was not included in the term "textile fabric" and objection was raised in the writ petition on behalf of the State that the petitioner should first avail of the alternative remedy provided under the Act and the appellate authority and the Board of Revenue should be allowed to decide the question. The High Court held that it would not be proper to interfere with the order of the assessing authority under Article 226 of the Constitution of India at that stage, and the taxing authorities having jurisdiction should be allowed to decide the question before them. This decision was approved by their Lordships of the

Supreme Court.

5. Mr. M. M. Vyas, the learned counsel for the petitioner, relied upon the decisions of their Lordships of the Supreme Court in *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, Municipal Council, Khurai and Another Vs. Kamal Kumar and Another*, and *M.G. Abrol Vs. Shantilal Chhotlal and Co.*, and argued that the existence of alternative remedy is not an absolute bar to exercise jurisdiction under Article 226 of the Constitution.

6. All the aforesaid cases cited by Mr. Vyas are not applicable to the circumstance of the present case. In *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, their Lordships pointed out that there may be two exceptions recognised, where the rule that the petitioner should exhaust alternative remedy before approaching the High Court under Article 226 of the Constitution may not apply, namely, where there was complete lack of jurisdiction in the officer or authority to take the action impugned or where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void. It has been observed that notwithstanding the existence of alternative remedy the High Court has a discretion in entertaining writ petitions and the aforesaid two conditions are not exhaustive. In that case, the High Court entertained the writ petition and their Lordships of the Supreme Court observed that in the peculiar circumstances of the case they would not interfere as the High Court had not exercised its discretion improperly in entertaining the writ petition. In the case of *Municipal Council, Khurai and Another Vs. Kamal Kumar and Another*, also the High Court has chosen to exercise its discretion and their Lordships felt that it would not be right for them to interfere in the exercise of discretion by the High Court unless they were satisfied that action of the High Court was arbitrary or unreasonable.

7. In *M.G. Abrol Vs. Shantilal Chhotlal and Co.*, the question canvassed before their Lordships of the Supreme Court was that there was conflict of jurisdiction between the Iron and Steel Controller issuing a license for exporting steel scrap under the provisions of the Export Control Order, 1954, and the customs authorities, prohibiting the export of the same on the ground that they were not goods covered by the licence. In those circumstances their Lordships thought that the High Court was right in exercising the jurisdiction under Article 226 of the Constitution and observed that their Lordships did not see any exceptional circumstance to interfere with the discretion of the High Court in exercising the jurisdiction.

8. In the present case, it is not in dispute that the assessing authority has passed an order of assessment and an appeal has been preferred by the petitioner before the prescribed appellate authority. The appellate authority is thus seized of the matter, and all the questions raised herein can be raised and can be adjudicated upon by the appellate authority. But what Mr. Vyas urges is

that a huge amount of tax will have to be paid before the appeals are disposed of and that the business of the petitioner may be completely ruined if he is forced to deposit the amount of tax which is to be realised from him. Mr. S. C. Bhandari, the learned counsel for the revenue, assures this Court that if an application for stay is moved by the petitioner before the appropriate authority, viz., the Commissioner of Sales Tax, then the application shall be reasonably considered. We hope that the appropriate authority will decide the stay application of the petitioner and shall take into consideration all the relevant circumstances including the one that the entire business of the petitioner may not be completely ruined. We also feel that the appeal preferred by the petitioner should be disposed of expeditiously. We are of the view that the appellate authority should dispose of the appeals expeditiously, say, within three months.

9. With the aforesaid observations the writ petition is dismissed as the petitioner is already availing of an alternative remedy of appeal available to him. We do not wish to express any view on the merits.