
(2010) 03 RAJ CK 0131
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3451 of 2010

Reckitt Benckiser (India) (P) Ltd.

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Value Added Tax Act, 2003 — Section 82, 83

Citation : (2010) 2 WLN 615

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Three petitions involving common question were heard together at joint request, and are being disposed of by present order.

2. Instant petitions have been filed assailing orders passed by Assessing Authority (Commercial Taxes Officer (Anti-Evasion) Circle-III, Jaipur) under Rajasthan Value Added Tax Act, 2003 ("the VAT Act"). It is not being controverted that assessments made by Assessing Authority for the years 2007-08, 2008-09 & April 2009 to December, 2009 vide orders impugned herein are appealable u/s 82 to the appellate authority and against an order of appellate authority, further appeal lies to the Tax Board u/s 83 of VAT Act.

3. Counsel for petitioners submits that against order of assessment for the year 2006- 07, appeal was preferred before the appellate authority u/s 82 which was rejected - against which further appeal as provided u/s 83 of VAT Act has not been filed; but petitioners approached by way of CWP-3002/2010 wherein while issuing notices, order of appellate authority (Deputy Commissioner (Appeals) has been stayed by the Court vide ad interim order dt. 26/ 02/2010.

4. Taking note whereof, counsel for petitioners submits that once identical issue as having arisen in instant petitions has been rejected by the appellate authority

while examining order of assessment for the year 2006-07, no purpose is going to be served in filing appeals against orders of assessment for subsequent years (April, 2007 to December, 2009) impugned herein; and that apart, once CWP-3002/2010 has been entertained and notices have been issued by this Court (supra), the same parity may be maintained and operation of impugned orders of assessment in the facts & circumstances of the case, may be stayed, as well.

5. Counsel further submits that three items "Harpic (Disinfectant Toilet Cleaner)", "Lizol (Disinfectant Floor Cleaner)" & "Dettol" came up for consideration for assessment year 2006-07 and it was held that they are not covered by Entries 21/29 of Schedule IV of VAT Act but being covered by residuary entry under Schedule V of VAT Act hence they are entitled to pay tax @ 12.5% instead of 4%; as such question for consideration as to whether these three items (supra) do fall within residuary entry in Schedule V or within Entries 21/29/47 of Schedule IV of the VAT Act, is purely a legal question involving interpretation of provisions of the VAT Act, therefore, remedy of appeal being available to the petitioners cannot be said to be efficacious in the facts & circumstances of instant case.

6. Respondents have entered into a caveat and filed reply to the Writ petitions raising preliminary objection that once remedy of appeal is available u/s 82 and further appeal lies before Tax Board u/s 83 of VAT Act, where question of interpretation can certainly be examined; in such circumstances, ordinarily this Court may not like to invoke extra ordinary jurisdiction under Article 226 of the Constitution of India; more so, when statutory right of appeal is available to the petitioners.

7. Counsel for respondents further submits that u/s 82 of VAT Act, appeal shall lie unless the assessee submits satisfactory proof of deposit of 10% of remaining demand over & above the admitted tax or other amounts and in case of ex-parte assessment order, it is 5% of remaining demand over & above the admitted tax; and to circumvent statutory requirement of appeal by not depositing 10% of remaining demand over & above admitted tax, petitioners have approached by way of instant petitions.

8. Counsel for respondents further submits that if an appeal preferred u/s 82 to the appellate authority is decided, yet remedy of appeal u/s 83 of VAT Act is available before Tax Board. Counsel submits that same very petitioners filed Org. Tax Appeal No. 6/2006 before Kerala High Court assailing order of Commissioner (Commercial Taxes) in regard to same issue as has come up for consideration before the Court raised in instant petitions, as to whether the products sold under brand names "Lizol, Harpic & Dettol" are covered by relevant entries or are liable to pay tax under residuary clause; and that issue has been finally decided against the petitioners vide judgment dt. 17/12/2008 by the High Court of Kerala; and as regards the issue as to whether three items "Lizol, Harpic & Dettol" are covered by entries 21, 29 or 47 of Schedule-IV; or do fall within

residuary entry under Schedule-V of the VAT Act, will certainly be examined by appellate authority independently and further by Tax Board being statutorily constituted under the Act.

9. Counsel further submits that as regards assessment made of year 2006-07, controversy relates only to the two items "Harpic & Lizol" and as regards "Dettol", it has been taken note of from the judgment of High Court while taking decision that it is not covered by entry in Schedule IV and will fall in residuary clause of Schedule-V and liable to pay tax @ 12.5%. Counsel submits that what has been observed by the assessing authority, is always open to be examined by appellate authority & Tax Board; in such circumstances, writ petitions in the facts & circumstances may be dismissed on the ground of alternative remedy being available to petitioners.

10. This Court has considered rival contentions raised by Counsel for the parties and with their assistance, examined material on record. As regards submission made by Counsel for petitioners in respect of ex parte order dt. 26/ 02/2010 passed by the Court in CWP-3002/2010, suffice it to say that it was an ex-parte order whereas in instant petitions, both the parties are being heard.

11. It remains un-controverted on record that the assessments made in instant petitions are for the years 2007-08, 2008-09 & April, 2009 to December, 2009; and statutory remedy of appeal before appellate authority u/s 82 and further appeal before Tax Board u/s 83 of VAT Act are available to the petitioners.

12. It is true that availability of an alternative remedy is not an absolute bar in exercise of equitable jurisdiction of this Court Under Article 226 of the Constitution of India. However, Apex Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, has laid down certain guidelines for invoking jurisdiction of this Court while alternative remedy of appeal is available to writ petitioners. Relevant observations made in para 15 read ad infra:

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restriction one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of any of the principles of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged.

13. The principle (supra) has been consistently followed by Apex Court in catena of cases; and according to which, this Court can certainly interfere despite statutory remedy is available only if there is a violation of principle of natural justice or proceedings are wholly without jurisdiction or vires of the Act are under challenge.

14. In the instant case, principles laid down by Apex Court (supra) are not attracted and it is not the case of petitioners that either there is a violation of principles of natural justice or the authority having made assessments impugned herein is not competent or that vires of the Act are under challenge - in absence whereof, in ordinary course, petitioners are to avail of statutory remedy of appeal under VAT Act and what has been urged to be examined by this Court as to whether three items "Lizol, Harpic & Dettol" are covered by entries under Schedule IV or do fall within residuary entry under Schedule V of VAT Act, are certainly the matter to be examined by the appellate authority on merits and any opinion if expressed by the Court at this stage, may cause prejudice to either of parties and it would be open for the petitioners to apprise the appellate authority or Tax Board as the case may be.

15. As regards submission made by Counsel for petitioners that since the appeal against assessments made of the year 2006-07 in regard to items "Lizol & Harpic" has been rejected by appellate authority, no purpose is going to be served while filing appeal against assessments made of subsequent years in regard to items "Lizol", Harpic, & Dettol", impugned in instant writ petitions, suffice it to say that it was for the petitioners to take decision as to whether order of appellate authority has to be further appealed before Tax Board u/s 83 of the VAT Act and if the petitioners has not preferred statutory appeal before TAX Board, certainly plea is not available to raise that since question in regard to items "Lizol & Harpic" has been decided by appellate authority and even if it is rejected once by appellate authority, no inference can be drawn and if the petitioners submits appeal and apprised the appellate authority in regard to submission having been raised. Certainly it would be open for the appellate authority to examine independently in accordance with law. That apart, still appeal if preferred u/s 82 may have same fate as urged on behalf of petitioners, certainly further appeal can be preferred u/s 83 of VAT Act before Tax Board and it being efficacious statutory remedy of appeal, is not covered by any of exceptions which the Apex Court has laid down in Whirlpool case (supra), it can be inferred by this Court that instant petitions have been filed just to circumvent the statutory remedy of appeal available to petitioners herein under VAT Act so as to exercise extra jurisdiction of this Court Under Article 226 of the Constitution of India. In view of alternative remedy available under the VAT Act, this Court declines to entertain instant petitions.

16. Consequently, writ petitions fail and are hereby dismissed. However, petitioners will be at liberty to avail of statutory remedy of appeal under law, if so advised.

17. No order as to costs.