
(2004) 02 RAJ CK 0005
In the Rajasthan High Court

Rishab Rolling and Grading Mills

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 11 VST 757

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on January 8, 2004 and amended on January 20, 2004 against the respondents with a prayer that by an appropriate writ order or direction the order dated January 16, 2004 (annexure 15) passed by the Commercial Taxes Officer (Anti Evasion), Bhilwara (respondent No. 3) for the assessment year 1999-2000 by which a demand of Rs. 3,21,864 has been raised against the petitioner and further the order dated January 16, 2004 (annexure 16) passed by the Commercial Taxes Officer (Anti Evasion), Bhilwara (respondent No. 3) for the assessment year 2000-2001 by which a demand of Rs. 4,41,000 has been raised against the petitioner be quashed and set aside and further it may be held that the proceedings conducted by the respondent No. 3 [Commercial Taxes Officer (Anti Evasion)], Bhilwara, are without jurisdiction and further it may be declared that imposition of tax through orders dated January 16, 2004 (annexures 15 and 16) are illegal as the petitioner is entitled to exemption on the basis of notification dated March 6, 1978 (annexure 6) and circular dated May 26, 1995 (annexure 9).

2. The facts of the case as put forward by the petitioner are as under:

(i) The petitioner Rishab Rolling and Grading Mills (hereinafter referred to as "the firm") is a proprietorship firm.

(ii) The firm is inter alia, engaged in the business of processing and selling anaj, dal, masala, etc. In this regard, the petitioner got itself registered with the District Industries Centre, Bhilwara. A copy of the permanent registration certificate is marked as annexe 1. The petitioner-firm has also been recommended for tax exemption by Rajasthan Khadi and Gramodhyog Board. The recommendation certificate dated July 29, 1999 is marked as annexe 2.

(iii) That the petitioner-firm is a registered dealer under the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the Act of 1994") and the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act of 1956").

(iv) It is the further case of the petitioner that the controversy in the present writ petition circumvents around the availability of exemption under the recommendation of Khadi and Gramodhyog Board, Rajasthan, in the sales and purchase under the CST Act.

(v) That further case of the petitioner is that notification dated March 6, 1978 (annexure 6) speaks about no levability of tax on dealers under the CST Act, recommended by said Khadi Commission on certain goods.

(vi) Further case of the petitioner is that the Commissioner of Commercial Taxes issued the circular dated May 26, 1995 (annexure 9) mentioning therein that the benefit of inter-State sales under the notification dated March 6, 1978 (annexure 6)(S. No. 384) will continue.

(vii) Further case of the petitioner is that despite the aforesaid clear position, the respondent No. 3 (Commercial Taxes Officer, Anti Evasion) issued show cause notices dated December 30, 2003 (annexures 11 and 12). As per those show cause notices dated December 30, 2003 (annexures 11 and 12), the respondent intend to tax the turnover under the CST Act for the relevant assessment year for which they have no right to do so as under the CST Act, exemption is very much available as per notification dated March 6, 1978 (annexure 6) and circular dated May 26, 1995 (annexure 9).

(viii) That further case of the petitioner is that replies were submitted to the show cause notices which are marked as annexures 13 and 14 respectively and initially these show cause notices dated December 30, 2003 (annexures 11 and 12) were challenged, but further case of the petitioner is that inspite of the fact that the show cause notices dated December 31, 2003 (annexures 11 and 12) were challenged in this writ petition, the respondent No. 3 (Commercial Taxes Officer, Anti Evasion) passed impugned assessment orders on January 16, 2004 (annexures 15 and 16) for the assessment years 1999-2000 and 2000-2001 respectively by which a demand of the amount mentioned in the orders dated January 16, 2004 (annexures 15 and 16) has been raised and now these orders dated January 16, 2004 (annexures 15 and 16) have been challenged in this writ petition.

3. In this writ petition, the main submission of the learned Counsel for the

petitioner is that in view of notification dated March 6, 1978 (annexure 6) and circular dated May 26, 1995 (annexure 9) benefit of exemption is available to the petitioner under the CST Act and, therefore, the imposition of tax through assessment orders dated January 16, 2004 (annexures 15 and 16) are per se illegal and without jurisdiction and are liable to be set aside.

4. That reply to the writ petition was filed by the respondents and a preliminary objection has been taken that since assessment orders dated January 16, 2004 (annexures 15 and 16) passed by respondent No. 3 (Commercial Taxes Officer, Anti Evasion) are appealable and first appeal lies u/s 84 of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the RST Act") and thereafter second appeal lies u/s 85 of the RST Act before the Rajasthan Tax Board and thereafter a revision lies u/s 86 of the RST Act before this Court and, therefore, in view of this fact, the present writ petition is not maintainable and deserves to be dismissed on the ground of alternative remedy. It has also been submitted by the learned Counsel for the respondents that the work undertaken by the petitioner-firm cannot be termed or treated to be manufacture and consequently it cannot be treated to be sale of the products manufactured in the State and thus, the assessing authority rightly held that by the process undertaken by the petitioner-firm, no new product is manufactured and the grains remain grains all times and thus, the petitioner-firm did not manufacture any new product and hence it was not at all entitled for the exemption as per the recommendations of Rajasthan Khadi and Gramodhyog Board, Jaipur and the sale of such grains was liable to be taxed at four per cent and it was rightly levied. It was further submitted by the learned Counsel for the respondents that Notification No. 6 dated August 16, 1983 (annexure 7) was superseded by subsequent notification dated March 27, 1995 (annexure 8/1) which clearly mentioned that exemption was available only to the products which were manufactured and hence, the writ petition deserves to be dismissed.

5. Heard and perused the record.

Before proceeding further, it may be stated here that now the orders dated January 16, 2004 (annexures 15 and 16) passed by respondent No. 3 (Commercial Taxes Officer, Anti Evasion) under the provisions of the RST Act have been challenged in this writ petition.

6. There is also no dispute on the point that a first appeal lies u/s 84 of the RST Act before the Deputy Commissioner (Appeals) against the order passed by the Commercial Taxes Officer and second appeal lies to the Rajasthan Tax Board u/s 85 of the RST Act and thereafter against the order of the Rajasthan Tax Board, revision lies before this Court u/s 86 of the RST Act.

7. It may further be stated that the right of appeal is substantive right and not a matter of mere procedure.

8. In the facts and circumstances of the present case, the question that arises for consideration is whether in view of the fact that there is alternative remedy of

appeal available to the petitioner, the present writ petition is maintainable or not.

9. In my opinion where an alternative and equally efficacious remedy is available to a litigant, he should pursue that remedy and may not invoke special jurisdiction of the High Court to issue a prerogative writ.

10. The remedy under Article 226 being, in general, discretionary, the High Court may refuse to grant it where there exists an alternative remedy, equally efficient and adequate, unless there are good grounds therefor, but where a party complaining of fraud had no other alternative remedy available, he could avail writ remedy and for that following authorities may be referred to:

- (i) Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes,
- (ii) Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others,
- (iii) United India Insurance Co. Ltd. Vs. Rajendra Singh and Others,
- (iv) K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.,

11. I The High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not, therefore, act as a court of appeal against the decision of a court or Tribunal, to correct errors of fact and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another Tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution, the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

12. In the present case, following questions of facts may arise:

- (i) Whether the petitioner is entitled to exemption as per the terms of notification dated March 6, 1978 (annexure 6) and circular dated May 26, 1995 (annexure 9) or not?
- (ii) Whether by the process undertaken by the petitioner, new product is manufactured by the petitioner-firm or not?
- (iii) Whether while passing the impugned assessment orders dated January 16, 2004 (annexures 15 and 16), various circulars, notifications and relevant laws have been followed or not?

13. In my opinion, the above questions are questions of facts or mixed questions of facts and law which should not be decided for the first time in writ jurisdiction under Article 226 of the Constitution of India. From this point of view also, the writ petition is not maintainable.

14. The honourable Supreme Court in the case of Basant Kumar Sarkar v. Eagle

Rolling Mills Ltd. reported in AIR 1964 SC 1260 has held that when alternative remedy is available, the matter cannot be considered under Article 226 of the Constitution of India. In this regard, the following authorities may also be referred to:

- (i) R. K. Panda v. Steel Authority of India [2000] DNJ 465.
- (ii) Dr. Ravi Dutt Sharma Vs. The State of Rajasthan,
- (iii) Laxman Singh Verma v. State of Rajasthan [2000] 1 RLR 137 (Raj).

15. Similar view has been taken by the honourable Supreme Court in the recent judgments reported in Sheela Devi Vs. Jaspal Singh, and Sadhana Lodh Vs. National Insurance Company Ltd. and Another,

16. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ.

17. In my considered opinion, a right to appeal may be an "adequate remedy" to bar the issue of a writ. In this regard, the following authority of the honourable Supreme Court may be referred to:

Bhopal Sugar Industries Ltd., Madhya Pradesh and Another Vs. D.B. Dube, Sales Tax Officer, Bhopal Region, Bhopal and Another,

When alternative remedy does not bar relief.

18. It should not, however, be forgotten that the existence of an alternative remedy is not an absolute bar to the granting of a writ under Article 226 but is a thing to be taken into consideration in the matter of granting writs. In other words, the existence of an alternative remedy is a rule of policy, practice and discretion and not a rule of law. It is a self imposed limitation and cannot oust the jurisdiction of the court. In exceptional circumstances, the High Court may grant relief under Article 226, even if an alternative remedy is available to the aggrieved person.

19. The existence of an alternative remedy is no ground for refusing prohibition or certiorari where-

- (a) the absence or excess of jurisdiction is patent and the application is made by the party aggrieved, or
- (b) there is an error apparent on the face of record,
- (c) there has been violation of the Rules of natural justice,
- (d) where there has been a contravention of fundamental rights,
- (e) where the Tribunal acted under a provision of law which is ultra vires.

20. Apart from this, when there is infringement of fundamental rights, where

remedy cannot be said to be alternative and where remedy cannot be said to be adequate or equally efficacious and where the order is ultra vires, without jurisdiction or violative of natural justice, writ petition under Article 226 of the Constitution of India can be entertained.

21. The rule requiring the exhaustion of alternative remedies before the grant of writ is a rule of policy, convenience and discretion for the guidance of court rather than a rule of law meaning thereby that in exceptional cases, though there is alternative remedy, still the writ jurisdiction lies.

22. In the present case, none of the abovementioned conditions are present and there is remedy available to the petitioner which is not only alternative but same is adequate and equally efficacious. From this point of view also, the present case is not that case where inspite of availability of alternative remedy, relief can be granted to the petitioner under Article 226 of the Constitution of India.

23. Hence, it is held that the present: writ petition is not maintainable on the ground of alternative remedy available to the petitioner as if this Court entertains the present writ petition under Article 226 of the Constitution of India, the provisions of Sections 84, 85 and 86 would be rendered nugatory.

24. In view of the law just discussed above, the following authorities on which reliance has been placed by the learned Counsel for the petitioner would not be helpful to him as the writ petition is not being decided on merits:

- (i) UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal,
- (ii) British Machinery Supplies Co. Vs. Union of India (UOI) and Others, and
- (iii) M/s. Continental Construction Ltd. Vs. Commissioner of Income Tax, Central-I,

25. For the reasons mentioned above, the present writ petition is treated as not maintainable as the petitioner has alternative remedy available to him by way of filing first appeal u/s 84 of the RST Act before the Deputy Commissioner (Appeals), hence the writ petition is liable to be dismissed as not maintainable.

26. For the reasons mentioned above, the present writ petition is dismissed. Cost made easy.