(1994) 05 DEL CK 0033

In the Delhi High Court

Case No : Civil Writ No. 4246 of 1992

Sales Tax Officer APPELLANT

Vs

Member, Appellate Tribunal and another RESPONDENT

Date of Decision : 04-05-1994

Acts Referred:

Citation : (1994) 05 DEL CK 0033

Hon'ble Judges : M. Jagannadha Rao, J;K. Shivshankar Bhat, J

Bench : Division Bench

Advocate : R.C. Chawla, for the Appellant; Sushil Kumar, for the Respondent

Judgement

M. Jagannadha Rao, C.J.—This writ petition is filed by the Sales Tax Officer, Ward No. 40, New Delhi, questioning the order of the Sales Tax Appellate Tribunal, Delhi, dated October 8, 1992, in Appeal No. 53/SIT/92-93 relating to the case of the assessed (2nd respondent).

2. By the order dated October 8, 1992 (annexure P2) the Tribunal modified the order of the Assistant Commissioner of Sales Tax dated March 27, 1992. The order of the Assistant Commissioner dated March 27, 1992 (annexure P10) was passed allowing the "petition" filed by the assessed and fresh opportunity was directed to be issued as provided in section 18(2) of the Delhi Sales Tax Act, 1975 and the Sales Tax Officer was directed to issue the statutory forms asked for by the dealer, subject to the conditions imposed in an earlier order dated February 6, 1992 :

"(a) the dealer furnishing registered dealer surety to the learned assessing authority''s satisfaction for Rs. 3 lakhs (rupees three lakhs only) from non-limited firm.

(b) the dealer is producing purchase documents and books of accounts.

(c) all the forms being filled up completely and signed in the presence of learned assessing authority and being handed over to the selling dealer in the presence of the learned assessing authority."

3. Thus the Assistant Commissioner, by order dated March 27, 1992, reconfirmed his order dated February 6, 1992.

4. Aggrieved by the said conditions imposed by the Assistant Commissioner, the dealer filed an appeal before the Tribunal in Appeal No. 53/SIT/92-93 and the said appeal was partly allowed by retaining the conditions imposed by the Assistant Commissioner but modifying the condition of security of Rs. 3 lakhs for Rs. 1 lakh. The present writ petition is filed by the Sales Tax Officer questioning the order of the Tribunal.

5. In the Tribunal, objection was raised for the department that the dealer has filed a "petition" before the Assistant Commissioner against the orders of the assessing authority and not regular appeal in "prescribed form" was filed before the Assistant Commissioner. The said contention was rejected by the Tribunal.

6. In this writ petition, the same point is canvassed for by the petitioner (Sales Tax Officer) by the learned counsel appearing for him. It is argued that no "petition" lay before the Assistant Commissioner against an order of the Sales Tax Officer. It is further argued that the appeal to the Tribunal was against an order passed by the Assistant Commissioner in a "petition" and was also bad. Counsel for the dealer (respondent No. 2) has made his submissions stating that the "petition" was treated as an appeal by the Assistant Commissioner.

7. In our view, the Tribunal was right in holding that the "petition" filed by the assessed before the Assistant Commissioner could be and was treated by the Assistant Commissioner as an appeal and when that was so, the contention that the "petition" was not described as an "appeal" and was not in the prescribed form cannot be permitted to be raised in writ jurisdiction. After all, if a few rupees as court fee on the petition filed before the Assistant Commissioner were to be collected for treating it as appeal, the Assistant Commissioner could do so. An appeal is a remedy resorted to by an affected party to an appellate body, by whatever name the appeal is described. Hence the "petition" to the Assistant Commissioner was indeed an appeal. The condition that the further appeal to the Tribunal by the dealer was also not maintainable depends again on the same question whether the first appeal before the Assistant Commissioner, by way of a petition, was proper. We are of the view that if the petition before the Assistant Commissioner was to be treated as an appeal, the appeal there from to the Tribunal was also maintainable and hence we need not interfere on the technicality of the form.

8. We, Therefore, find no merit in this writ petition. The same is dismissed.

9. Writ petition dismissed.

