(1971) 03 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No. 3911 of 1970

Sree Rajendra Mills Ltd. APPELLANT

Vs

Joint Commercial Tax Officer RESPONDENT

Date of Decision : 17-03-1971

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1971) 28 STC 483

Hon'ble Judges : Veeraswami, C.J;Raghavan, J

Bench : Division Bench

Advocate : S. Padmanabhan, for the Appellant; A.R. Lakshmanan, for First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, C.J.—The turnover in question relating to what is stated to be lending of cotton is the subject-matter of an appeal before the Appellate Assistant Commissioner of Commercial Taxes. The matter relates to the year 1967-68. For the earlier year, we are told that a similar turnover was considered by the Tribunal, which was of opinion that the transactions amounted to lending and they were not sales. When the appeal in respect of the year 1967-68 is pending, we do not think it desirable and necessary to deal with the matter under Article 226 of the Constitution. Normally, the assessee should be compelled to resort to the statutory remedy. In fact, in this case, he has availed himself of it and he must await the result.

2. But an apprehension is expressed on behalf of the assessee that because a tax case has been filed against the Tribunal''s decision relating to the year 1967-68, the Appellate Assistant Commissioner might feel that he was not bound by the view of the Tribunal. We consider that in the hierarchy of authorities set up under the Act, the Tribunal is superior to the Appellate Assistant Commissioner, who is bound by the orders of the Tribunal. The orders of the Tribunal will be as effective as the orders of this Court so far as their binding character on the Appellate

Assistant Commissioner is concerned. Merely because a tax case has been filed by the department, it does not mean it acts as a kind of stay of operation of the order of the Tribunal. So long as that order of the Tribunal is not set aside, the Appellate Assistant Commissioner is bound to give effect to it, and if he fails to do it and by-passes it on the ground that the department has filed an appeal, it will be really a contempt of the Tribunal''s order. In the circumstances, therefore, we should think that the Appellate Assistant Commissioner will, as he is bound to, follow the Tribunal''s view. It is, of course, open to the Appellate Assistant Commissioner to take his own view on the facts, but, so far as the law propounded by the Tribunal is concerned, it is binding and it should be applied by the Appellate Assistant Commissioner to the facts before him.

3. Subject to these observations, the petition is dismissed. No costs.

