(1997) 01 P&H CK 0201

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 3588 of 1990

Swastick Pipes Limited — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 14-01-1997

Acts Referred:

Constitution of India, 1950 — Article 300A, 301, 304
Haryana General Sales Tax Act, 1973 — Section 15, 18, 6

Citation : (1997) 116 PLR 691

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : K.K. Gupta and Sanjay Vij, for the Appellant; H.S. Hooda, General and M.K. Sangwan, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—The petitioner company is engaged in manufacturing of M. S. Black pipes/tubes and galvanised pipes/tubes and also in the sale of these pipes and tubes. For carrying its manufacture'' activity, the petitioner purchased material from various sources. It has challenged the constitutional validity of the provisions contained in the Haryana General Sales Tax Act regarding the levy of purchase tax and has pleaded that in view of the decisions of this Court in Good Year India Linked v. State of Haryana 58 S.T.C. 163 and Bata India Limited v. State of Haryana 54 S.T.C. 226 as well as the decision of Supreme Court in Good Year India Limited v. State of Haryana (1990)76 S.T.C. 71 the levy of purchase tax be declared unconstitutional.

2. At the commencement of the hearing, learned Advocate General invited our attention to the latter decision of the Apex Court referred to in a recent judgment dated 11th December, 1996 passed in Good Year India Limited and Another Vs. The State of Haryana and Another, decided alongwith three other writ petitions and submitted that in view of the latest decisions of the Supreme Court and of this Court the writ petition should be dismissed.

3. Learned counsel for the petitioner could not show as to how the levy of purchase tax can be declared unconstitutional in the face of the judgments of the Supreme Court in Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., and M/s. Devi Dass Gopal Krishan Pvt. Ltd., etc. etc., Vs. State of Punjab and another etc. etc., in which the decision of the two judges bench in Good Year India Limited v. State of Haryana has not been approved. He also could not show any ground for reconsideration of the issue relating to the validity of the provisions relating to the levy of purchase tax in view of the aforementioned two judgments of the Supreme Court which have been relied upon by the Full Bench in United Receland Limited and Another Vs. The State of Haryana and Others, and by the Division Bench in Good Year India Limited v. State of Haryana and Ors. decided on 11th December, 1996.

4. In view of the above, we hold that the provisions of Haryana General Sales Tax Act, 1973 are not ultra vires to the provisions of Articles 14 and 19(1)(g) and 300-A and Articles 301 to 304 of the Constitution and the writ petition is liable to be dismissed.

5. At this stage learned counsel for the petitioner submitted that despite the stay order passed by the High Court on 21st March, 1990, the Assessing Authority passed the final assessment order during the pendency of the writ petition but the petitioner could not take further proceedings due to the pendency of the writ petition. Learned counsel submitted that liberty should be given to the petitioner to avail the remedy of appeal. Learned Advocate General does not seriously oppose the request of the learned counsel for the petitioner.

6. In view of above, we dismiss the writ petition but with liberty to the petitioner to avail the remedy by way of appeal as provided in the Haryana General Sales Tax Act, 1973 and direct that in case the appellant files an appeal within thirty days from today, the same shall be heard and decided by the appellate authority on merits and. shall not be dismissed on the ground of bar of limitation. However, entertaining'' of the appeal will be subject to fulfilment of the conditions enumerated in Section 39(5) of the 1973 Act.

7. A copy of this order be given dasti on payment of necessary charges.

