(2010) 02 AHC CK 0141

In the Allahabad High Court

Tata Teleservices Limited — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Value Added Tax Act, 2008 — Section 55

Citation : (2010) 02 AHC CK 0141

Hon'ble Judges : Devi Prasad Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Heard Shri Bharat Ji Agarwal learned Senior Counsel and Shri S.M.K. Choudhary learned Senior Counsel assisted by Shri Rahul Agarwal on behalf of the petitioner and Shri H.P. Srivastava learned Additional Chief Standing counsel for the respondents.

2. Whether the tax imposed by the Assessing Officer under Uttar Pradesh Value Added Tax Act 2008 treating Artificially Created Light Energy (ACLE) as ''goods'' is correct or not is involved in the present writ petition.

3. While imposing the tax under the Value Added Tax Act the Assessing Officer had relied upon the judgement of Karnataka High Court 2009 (22) VST 465 (Kar), Bharti Airtel Ltd. v. State of Karnataka and Ors.

4. It has been stated by learned Senior Counsels that the judgement of Karnataka High Court has been set aside by Hon''ble Supreme Court and in spite of categorical pleading with that regard the Assessing Officer had not taken into account the judgment of Hon''ble Supreme Court. The objection filed by the petitioner before the Assessing Officer has been filed as Annexure-8 to the writ petition, which shows that specific plea was taken by the petitioner advancing arguments that judgment of Karnataka High Court has been set aside by Hon''ble Supreme Court in appeal vide order dated 2.3.2009.

5. A perusal of the judgment of Hon''ble Supreme Court shows that their Lordships had left it open to the first appellate authority to decide the controversy as to whether ACLE may be treated as goods under the Act or not? The observation made by the Karnataka High Court with regard to controversy has been set aside by the Hon''ble Supreme Court. Since, specific plea was raised by the petitioner before the Assessing Officer, it was incumbent upon the Assessing Officer to record a finding on the ground raised by the petitioner. The Assessing Officer should have pass a speaking and reasoned order keeping in view the ground raised by the petitioner instead of mechanically deciding the issue in terms of Karnataka High Court.

6. While approaching this Court under writ jurisdiction the petitioner had prayed for issuance of writ in the nature of certiorari to quash the impugned order passed by the Assessing Officer.

7. Admittedly, the petitioner has got alternative remedy to prefer an appeal u/s 55 of the U.P. VAT Act 2008.

8. It has been settled by Apex Court in various cases reported in 2003 (6) SCC 22 0, Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar, Shri Bimal N. Desai Vs. State of Karnataka and Others, National Highway Authority of India Vs. Ganga Enterprises and Another, Union of India (UOI) and Others Vs. Ingersoll Rand (India) Ltd., Union of India and Ors. v. Ingersoll Rand (India) Ltd that power of appellate court is much wider than the power of this Court available under Article 226/227 of the Constitution of India.

9. In view of above, the appellate authority has got ample power to adjudicate the controversy raised by the appellant while approaching this Court under extraordinary remedy of Article 226 of the Constitution of India.

10. Accordingly, we are not inclined to interfere with the order passed by the Assessing authority. However, appellant''s counsel undertakes to prefer an appeal within a period of two weeks from today. Accordingly, it is provided that in case, appeal is preferred before the appellate authority within a period of two weeks from today the appellate authority shall decide the same keeping in view the ground raised by the appellant as well as judgement of Hon''ble Supreme Court referred by the petitioner or any other judgment of Hon''ble Supreme Court or High Court and shall pass a reasoned order expeditiously within a period of four months from the date of filing of appeal. For the period of four months petitioner shall not be compel to deposit the tax imposed by the Assessing Officer.

11. Writ petition is disposed of accordingly. Cost made easy.