
(2019) 10 UK CK 0002
In the Uttarakhand High Court
Case No : Special Appeal No. 922 Of 2019

Texplas Textiles India Pvt. Ltd	Vs	APPELLANT
State Of Uttarakhand And Others		RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Uttarakhand Value Added Tax Act, 2005 — Section 31
Securitization And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 13(4), 17
Constitution Of India, 1950 — Article 226

Citation : (2019) 10 UK CK 0002

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : P.R. Mullick, S.S. Chaudhary, D. Barthwal

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri P.R. Mullick, learned counsel for the appellant-writ petitioner, Sri S.S.Chaudhary, learned Brief Holder for the State Government, and Sri Dharmendra Barthwal, learned counsel for the 4th respondent-Bank.

2. The appellant herein filed Writ Petition (M/S) No. 2982 of 2019 seeking a writ of certiorari to quash the ex parte assessment order dated 31.08.2018, for the Assessment Year 2014-15, passed by the 5th respondent; to quash the citation of recovery issued and the notice dated 06.08.2019 issued by the Tehsildar, Haridwar; a writ of mandamus directing the State Bank of India, Stressed Assets Management Branch, New Delhi to provide the books of accounts, records, invoices, documents, declaration forms, monthly returns etc. lying inside the closed factory premises; to direct the Deputy Commissioner (Assessment) to re-open the ex-parte assessment for the Assessment Year 2014-15, under Section 31 of the Uttarakhand VAT Act, 2005, by providing fresh opportunities of hearing to the appellant-writ petitioner; and, as ad-interim relief, to stay the operation of

the recovery proceedings being initiated by the Tehsildar, Haridwar.

3. Facts, as noted by the learned Single Judge in the order under Appeal, are that the appellant-writ petitioner took a loan from the 4th respondent which they were not in a position to repay; the appellant-writ petitioner's account was declared a 'non-performing asset'; the Bank, thereafter, initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 'SARFAESI Act') for recovery of the loan amount; aggrieved thereby, the appellant-writ petitioner filed Writ Petition (M/S) No.146 of 2017, which was disposed of, by order dated 02.05.2017, relegating the appellant-writ petitioner to invoke the jurisdiction of the Debts Recovery Tribunal under Section 17 of the SARFAESI Act; the appellant-writ petitioner availed the remedy under Section 17 of the SARFAESI Act; and the matter is said to be still pending before the Debts Recovery Tribunal.

4. While matters stood thus, an ex parte assessment order appears to have been passed by the Commercial Tax Officer, Haridwar on 31.08.2019. This order was followed by a citation of recovery, and a notice being issued by the Tehsildar, Haridwar to the appellant-writ petitioner on 06.08.2019. After receipt of the recovery citation, the appellant-writ petitioner invoked the jurisdiction of this Court contending that, since the books of accounts and all other forms were lying in the factory, which was sealed on possession being taken of the factory by the 4th respondent-Bank under Section 13(4) of the SARFAESI Act, they are not in a position to challenge the assessment order; the 4th respondent be directed to hand-over the books of accounts to the appellant-writ petitioner to enable them to prefer an appeal to the appellate authority under Section 31 of the Uttarakhand VAT Act, to set aside the ex parte assessment order passed by the Commercial Tax Officer, Haridwar on 31.08.2018, and for the matter to be re-opened and re-heard on merits by the assessing authority; and, in the meanwhile, for the recovery citation to be kept in abeyance.

5. In the order under appeal, the learned Single Judge observed that it was open to the appellant-writ petitioner to approach the Debts Recovery Tribunal for the reliefs sought for in the writ petition. The writ petition was, accordingly, dismissed granting liberty to the appellant-writ petitioner to move an appropriate application, for return of the documents, before the Debts Recovery Tribunal. Aggrieved thereby, the present Appeal.

6. Sri P.R. Mullick, learned counsel for the appellant-writ petitioner, would submit that the appellant-writ petitioner is suffering from dire financial constraints; for no fault of theirs, they are now mulcted with a huge tax liability by the assessing authority; it is only if the 4th respondent-Bank hands-over the books of accounts to them, would they be in a position to avail the remedy under Section 31 of the Uttarakhand VAT Act; and unless the recovery citation is stayed till then, they would suffer irreparable loss and injury.

7. The appellant-writ petitioner has, admittedly, questioned the action of the 4th

respondent-Bank in taking possession of the said property under Section 13(4) of the SARFAESI Act by way of an application made, under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal. The 4th respondent-Bank has taken possession of the entire factory which would include whatever is available thereat.

8. While it is not known whether the books of accounts and other documents, which the appellant-writ petitioner seeks release of, are still lying within the factory premises which has been sealed by the 4th respondent-Bank, such a request can, undoubtedly, be made to the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, since possession being taken by the fourth respondent of the factory premises, under Section 13(4) of the SARFAESI Act, would include all movables and immoveable lying within the factory premises, including the books of accounts. There is no bar, therefore, for the appellant-writ petitioner to file an IA in the pending proceedings, under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal seeking release of the books of accounts, if any, lying within the factory premises. That would, however, not justify interference by this Court in proceedings under Article 226 of the Constitution of India. The order passed by the assessing authority dated 31.08.2018 has attained finality, as it was passed more than a year ago. It is for recovery of the tax liability, in terms of the assessment order, that a recovery citation was issued and action is being taken for recovery of the amount. The appellant-writ petitioner claims that, after return of the books of accounts, they would prefer an appeal under Section 31 of the Uttarakhand VAT Act; and, till orders are passed under Section 31, recovery proceedings should be stayed. This contention is only to be noted to be rejected.

9. It is not even known whether the books of accounts, which the appellant-writ petitioner claims are located in the factory, are, in fact, located within the factory or not. Even if they are, it is still a matter of conjecture whether the appellant-writ petitioner's appeal would be entertained under Section 31 of the Uttarakhand VAT Act, after a lapse of more than a year.

10. It would be wholly inappropriate for this Court, in judicial review proceedings under Article 226 of the Constitution of India, to interfere with the recovery citation or the notice issued by the Tehsildar, Haridwar on these grounds. It may also not be appropriate for us to express any opinion on whether or not the appellant-writ petitioner is entitled to seek condonation of delay of more than one year in preferring the appeal, for these are matters for the appellate authority to consider as and when the appellant-writ petitioner prefers an appeal. We may not be justified, in such circumstances, in staying the recovery citation.

11. Further the scope of interference, in an intra-Court appeal, is extremely limited and, save cases where the order under appeal suffers from a patent illegality, no interference is called for. We see no reason, therefore, to interfere with the order under appeal.

12. The Special Appeal fails and is, accordingly, dismissed. No costs.