(2011) 02 KL CK 0061

In the High Court Of Kerala

Case No : WA No''s. 173 and 177 of 2011

The India Cements Limited — APPELLANT

Vs

The Assistant Commissioner — RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Citation : (2011) 02 KL CK 0061

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : K. Srikumar, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran Nair, J.—These Writ Appeals are filed against the judgment of the learned Single Judge declining to entertain challenge against assessment and the Appellant to pursue statutory remedy of appeal. In the normal course, we would not have allowed the Appellant to contest the sales tax assessment on merit in writ proceedings. However, learned Counsel for the Appellant referred to the assessment challenged in the Writ Petition before this Court, wherein the Assessing Officer has just followed a Division Bench judgment of this Court in the case of IFB Industries Ltd. v. State of Kerala (judgment in S.T. Rev. No. 396/2008) and disallowed Assessee''s claim for discount, which is a huge amount given through credit notes. Learned Special Government Pleader appearing for the Respondents submitted that the same preposition as laid down in the above case was declared by this Court vide judgment in the case of Godrej and Boyce Mfg. Co. Ltd. Vs. State of Kerala, . We find force in the contention of the Appellant that when the sole question to be decided in the Appeals is covered by the Division Bench judgments of this Court, which are binding on the statutory authorities, no purpose will be served by relegating the matter to the appellate authority. The challenge, therefore, is against the Division Bench judgments of this Court, and the learned Counsel for the Appellant submitted that the decision of this Court in IFB Industries case has already been challenged in an SLP filed before the Supreme Court and the SLP is admitted, and an intervening application also has been filed by the Appellant in the SLP. In the circumstances, we feel the Appellant''s remedy is only to approach the Supreme Court because we do not propose to consider the correctness of our above referred decisions, which are confirmed in several later decisions.

2. Learned Counsel for the Appellant has also relied on several earlier judgments of the Supreme Court, particularly in Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) v. Advani Coorlikon (P) Ltd., reported in 1980 KHC 71, and Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Motor Industries Co., reported in 53 STC 48. Learned Special Government Pleader submitted that these judgments pertain to the provisions of the KGST Act and Rules prior to the amendment. We feel the Appellant''s remedy is to challenge the decision of this Court relied on by the Assessing Officer in disallowing claim of deduction of discount before the Supreme Court. Consequently, following our above two decisions, we uphold the assessment disallowing discount on credit notes. These Writ Appeals are, accordingly, dismissed on merit leaving it open to the Appellant to approach the Supreme Court, if they have any grievance against this judgment.

3. Since an SLP is already pending, there will be a direction to the Respondents to withhold recovery proceedings for a period of six weeks from now. However, if stay is not obtained within the said period, Respondents are free to proceed with recovery after six weeks.

