(1993) 11 MAD CK 0074

In the Madras High Court

Case No : W.A. No''s. 1193 and 1194 of 1993

Valtech High Tech Composites Pvt. Ltd. — APPELLANT

Vs

Special Commissioner and Commissioner for Commercial Taxes, Chepauk, Madras-5 and another — RESPONDENT

Date of Decision : 01-11-1993

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1993) 11 MAD CK 0074

Hon'ble Judges : K.A. Swami, C.J;Somasundaram, J

Bench : Division Bench

Advocate : G. Narayanan, for K. Narayanaswamy, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader (Taxes), for the Respondent

Judgement

K.A. Swami, C.J.—Additional Government Pleader for Taxes to take notice.

2. These writ appeals have been preferred against the order dated September 2, 1993, passed by the learned single Judge in Writ Petitions Nos. 16849 and 16850 of 1993. The writ petitions have been dismissed. Therefore, the petitioners have come up in these appeals.

3. The petitioner sought for issue of writs in the nature of mandamus to respondents 1 and 2 restraining them from proceeding with the show cause notices dated July 26, 1993, issued in respect of the assessment year 1990-91 and 1991-92.

4. Learned single Judge has declined to entertain the writ petitions on the ground that it is open to the appellant/petitioner to file its objections and urge all the contentions that have been raised in the writ petitions before the assessing authority, therefore it is not a stage at which interference is called for.

5. However, before us, it is contended that as the show cause notices issued to the appellant/petitioner are quite opposed to a decision of the Supreme Court in State of Kerala v. Attesee (Agro Industrial Trading Corporation) [1989] 72 STC 1

interpreting the similar provisions contained in the Kerala General Sales Tax Act as contained in item No. 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959, the assessing authority by issuing the impugned notices has tried to clutch the jurisdiction by proposing to assess the turnover relating to glass cloth or glass fabric.

6. It is relevant to notice that the jurisdiction under article 226, unless it be pointed out that without any further establishment of facts or determination of the question of law involved therein, the notices issued are clearly without jurisdiction, cannot be exercised so as to by-pass the statutory remedies provided. The question for consideration would be whether glass cloth or glass fabric will also be covered by item No. 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959. That question, the authority is entitled to decide. Therefore, it is not possible to hold that by issuing the impugned notices, the assessing authority has acted without the authority of law or has right to clutch at the jurisdiction. After hearing the objections filed by the assessee the assessing authority may come to the conclusion that glass fabric or glass cloth concerned herein is also included in item No. 4 of the Third Schedule to the Tamil Nadu General Sales Tax Act. But, undoubtedly, the authority has jurisdiction to decide this question. If the assessing authority commits an illegality in deciding this question the appellant/petitioner has a right of appeal to the Appellate Assistant Commissioner and a further appeal to the Sales Tax Appellate Tribunal, and thereafter there is a sales tax revision to this Court, which will be heard by a Division Bench. Under these circumstances, it will not be just and appropriate to exercise the jurisdiction under article 226 of the Constitution, as otherwise, the exercise the jurisdiction in a case like this would amount to ignoring the jurisdiction conferred upon the several authorities as per the provisions of the Tamil Nadu General Sales Tax Act. Hence, we are of the view that the petitioner has approached this Court in a hurry, without waiting for the adjudication by the assessing authority. Therefore, we keep open all the contentions raised by the petitioner/appellant and agree with the learned single Jungle in holding that this is not a stage, at which interference is called for and dismiss the writ appeals.

7. However, it is brought to our notice that the last date for filing the objections expires today. On this point, we have heard learned Additional Government Pleader for Taxes. As we have declined to entertain the writ appeals, at this stage, it is just and necessary that the petitioner/appellant should be granted some more time to file the objections. We, accordingly, direct that if the petitioner/appellant files the objections on or before November 15, 1993, the same shall be taken into consideration, heard and decided in accordance with law. Till then, the assessing authority shall not proceed with the show cause notices. No order as to costs.

8. Writ appeals dismissed.

