

(1981) 12 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No's. 2830, 3153 and 3154 of 1980

Wheels India Limited

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 01-12-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 52 STC 245

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : A. Devanathan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Nainar Sundaram, J.—In W.P. No. 2830 of 1980, the petitioner prays for the issue of a writ of certiorari to quash the assessment order dated 21st March, 1980, for the assessment year 1978-79 of the second respondent passed against the petitioner. In W.P. No. 3153 of 1980, the petitioner prays for the issue of a writ of certiorari to quash the reassessment order dated 3rd May, 1980, for the assessment year 1974-75 of the second respondent against the petitioner. In W.P. No. 3154 of 1980, the petitioner prays for the issue of writ of certiorari to quash the reassessment order dated 3rd May, 1980, for the assessment year 1975-76 of the second respondent against the petitioner. The second respondent has passed the impugned order assessing wheels and top rollers manufactured by the petitioner and supplied to the Heavy Vehicles Factory, Avadi, as tractor parts taxable under entry 55 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 (hereafter referred to as the Act). The petitioner wants to have the said items manufactured by it taxed at multi-point rate.

2. Mr. A. Devanathan, learned counsel appearing for the petitioner, would state that the wheels and top rollers manufactured by the petitioner and supplied to the Heavy Vehicles Factory, Avadi, cannot be classified as tractor parts taxable under entry 55 of the First Schedule and the said items can only be classified as

component parts of a tank. Before this question could be further probed into, the Additional Government Pleader, representing the respondents, raised a preliminary objection as to the propriety of going into this question in writ jurisdiction and submits that the petitioner has got an adequate alternative remedy of appeals against the orders passed by the second respondent and further appeals against the orders to be passed by the appellate authority, and exploration into this question will involve an assessment of the aspect as to whether the wheels and the top rollers manufactured by the petitioner and supplied to the Heavy Vehicles Factory, Avadi, are spare parts of a tank as claimed by the petitioner or spare parts of a tractor as opined by the second respondent and on this ground, the learned Additional Government Pleader submits that the matter should be relegated for a decision by the authorities constituted under the Act to hear appeals against the orders of the second respondent.

3. In *Sakthi Sugars Limited v. Deputy Commercial Tax Officer* [1969] 23 STC 232 *Veeraswami and Ramaprasada Rao, JJ.* (as they then were), were dealing with the question as to whether the sugarcane setts are sugarcane and whether this Court can indulge in an investigation of a jurisdictional fact. The learned Judges opined as follows :

"No doubt the main point urged is one of fact. But if a factual determination on a question tantamounts to the investigation of a jurisdictional fact, then this Court will not refrain from investigating the same and adjudicating upon it. If the result of such an investigation decides a jurisdictional fact which would enable the taxing authorities to assume jurisdiction and bring to tax certain articles, then it cannot be said that no rule at all under article 226 can be issued. Each case has to be decided on its own merits and we are inclined in the instant cases to consider whether the respondent in each of these petitions has the jurisdiction to assess the petitioners as proposed by him and whether his completed orders of assessment in respect of certain of the years under consideration are proper and legal."

4. In that case, the learned Judges were not facing any complicated question of fact on the above aspect and they had no difficulty in holding that sugarcane setts are botanical seeds from which spring sugarcane and nobody could supply sugarcane setts when sugarcane is asked for and in that context they expressed the opinion that sugarcane setts are not sugarcane as is understood in commerce and trade.

5. In an earlier case, the same learned Judges, in *T. P. Sokkalal Ramsait Factory P. Ltd. v. Deputy Commercial Tax Officer* [1967] 20 STC 419 delineated the scope of the powers of this Court under article 226 of the Constitution of India to quash orders of assessment or reassessment for which statutory remedies are available, in the following terms :

"..... normally this Court will decline to act under article 226 of the

Constitutions to quash orders of assessment or reassessment for which statutory remedies are available. No one can be allowed to bypass those remedies and resort to this Court unless a question of vires of a statute or a rule, or an error of jurisdiction is involved. Certiorari, of course, will be available to correct an error apparent on the face of the record, but if it is an error which is within the competence of the appellate or revisional authority to correct, there will be no jurisdiction for direct application to this court. Occasionally, when patent injustice appears to have been done, and compelling the aggrieved party to resort to statutory remedies will involve not only long delay but harassment, it will be in the discretion of this Court to entertain a petition under article 226 of the Constitution. The language of that article is so wide that by itself it places no limitations as we have just now mentioned, and the reference therein to certain forms of Crown Writs is only by way of illustration. Wide as the powers of this Court are under the article, it has, for that very reason, to place certain restrictions upon itself, the applicability of which is entirely left to its discretion."

6. The question as to whether the wheels and top rollers manufactured by the petitioner and supplied to the Heavy Vehicles Factory, Avadi, are spare parts of a tank or of a tractor is not one that could be decided without investigating minutely and technically as to the mechanism involved both in a tank and in a tractor. Equally so, it will involve a detailed investigation as to the mechanical features of the items manufactured. It is in this context that the necessity to place certain restrictions upon this Court to investigate into such disputed questions of fact under article 226 of the Constitution of India arises. It cannot be laid down uniformly that this Court shall in all cases investigate into questions of fact, though of jurisdictional nature, whenever the party approaches this Court under article 226 of the Constitution of India. As pointed out by the Division Bench in *Sakthi Sugars Limited v. Deputy Commercial Tax Officer* [1969] 23 STC 232, each case has to be decided on its own merits. It cannot be stated that there is an error apparent on the face of the record. It is not as if, the error, if any, committed by the assessing authority cannot be corrected or rectified by the higher authorities under Act. It cannot also be assumed that patent injustice appears to have been done to the petitioner. After all, the respondent has opined that the wheels and top rollers manufactured by the petitioner are tractor parts. This opinion may be erroneous. But definitely the petitioner can demonstrate before the higher authorities under the Act by factual and technical data that this opinion is wrong. Certainly they have jurisdiction to go into this question and adjudicate it. The nature of the question which the petitioner wants this Court to investigate and answer cannot be said to be beyond factual controversy and an investigation into it will definitely involve investigation of complex questions of fact. These aspects can be appropriately agitated before the statutory tribunals. In this view, I do not feel called upon to go into the merits of the case and accordingly these writ petitions are dismissed but there will be no order as to costs. The time taken in prosecuting the writ petitions will stand excluded if the petitioner desires to prosecute the statutory remedies under the Act.