

TTP Technologies Pvt. Ltd. Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-10-2016

Judge : Vineet Kothari

Appeal No. : Writ Petition Nos. 57922-933 of 2016 (T-Res)

Appellant : TTP Technologies Pvt. Ltd.

Respondent : State of Karnataka

Judgement :

(Prayer: These W.Ps. are filed under Articles 226 and 227 of the Constitution of India praying to quash the reassessment orders dated 30.04.2015 passed under Sec.39(1) of Kvat Act by Deputy Commissioner of Commercial Taxes (Audit) - 6.5, Bangalore for the Tax Periods April, 2008 to March, 2009 In Cas Order No.212505017 And Consequential Demand Notice Issued In form 180 Dated 30.04.2015 In demand No.128235806- Annex-G.)

1. These writ petitions are directed against the Assessment order passed by the respondent-Assessing Authority under Section 39(1) of the KVAT Act, 2003 (for short 'the Act'), for the assessment made from April 2008 to March 2009 on 30.04.2015.

2. The petitioner-assessee also filed Rectification Application on 27.05.2015, against the said order, which too came to be rejected by the said Authority on 21.10.2016. Thereafter, these writ petitions have been filed before this Court

challenging both the said orders passed by the respondent-Assessing Authority.

3. The learned counsel for the petitioner-assessee Mr.M.Thirumalesh, has emphasized before this Court that the respondent-Assessing Authority-has not complied with the principles of natural justice, while passing the impugned order by,

(i) not giving specific preposition notice while applying G.P.rate and the additions made in the impugned order.

(ii) that the details in question were furnished before the Assessing Authority well in advance and without applying his mind to the same, he has passed the impugned order.

(iii) that certain audit reports were also relied upon by the Assessing Authority, without confronting that material to the petitioner-assessee.

He also relied upon the Division Bench judgment of this Court in the case of Paharpur Cooling Towers Limited, Bangalore Vs. The Assistant Commissioner of Commercial Taxes and another reported in 2015(82) Kar.L.J.152(DB).

4. Having heard the learned counsel for the petitioner at some length at the admission stage, this Court is satisfied that the present writ petitions are not maintainable and deserve to be dismissed on the ground of an effective alternative remedy available to the petitioner under Section 62 of the KVAT Act, 2003, against the impugned orders assailed before this Court in the present writ petitions.

5. It is not the case of the petitioner that no notice was ever served upon the petitioner before passing the impugned assessment order on 30.04.2015. Such a proposition notice was given to him on 16.04.2014 vide Annexure-E. He even filed a reply thereto vide Annexure-F dated 27.04.2015. But once the order was passed on 30.04.2015, for the reasons best known to the petitioner-assessee, instead of filing the regular Appeal against the Assessment order, he chose to file a rectification application Annexure-H on 27.05.2015, which only permits correction of certain apparent mistakes in the impugned order. The said application, of-course, came to be rejected after lapse of more than a year vide

Annexure-K dated 21.10.2016.

6. The filing of the proceedings by way of rectification application, does not absolve nor does it bar the petitioner-assessee, if he is aggrieved by the impugned Assessment order, to simultaneously avail the regular remedy by way of Appeal also under Section 62 of the KVAT Act, 2003, notwithstanding the fact he has filed the rectification application under Section 69 of the Act.

7. It appears that since the petitioner crossed the limitation for filing of an appeal under Section 62 of the Act and also because there is a requirement of pre-deposit of tax for entertaining such appeal, the petitioner-assessee did not chose to file such appeal against the impugned order.

8. The contentions raised before this Court about the alleged breach of principles of natural justice are misconceived. The principles of natural justice only requires that the assessee is notified and informed about the initiation of the assessment proceedings and a reasonable opportunity of hearing is given to the assessee concerned before any order is passed against him which may be adverse to his interest. It is neither the intention of the law nor the alleged breach of principles of natural justice, which allows the aggrieved person to invoke the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India to enjoin an examination of facts to the extent of minute details or an enquiry into the facts regarding the extent of taxability of particular item of turnover etc., as narrated before this Court, by the learned counsel for the petitioner, namely, that the additions in taxable turnover sought to be made, have to be first given out before hand in the proposition notice or that if the details and documents produced before the Assessing Authority are not fully explained, then even before making a best judgment assessment by estimation of the turnover and imposing tax thereon by applying the gross profit ratio rate, even that is also first specifically required to be notified to him in advance or that certain materials which are available on the record of the Assessing Authority like Audit report, has also to be specifically notified to him, so as to take his response thereto on record. But this is not what the breach of principles of natural justice on the part of the assessing authority is. But this is really a breach of duty on the part of assessee to fully cooperate in the

assessment proceedings and satisfy the assessing authority on all the relevant aspects of the documents, details of returns filed by him and to rebut the adverse material against him.

9. There are specific timeframes for passing of the Assessment orders and once the assessee has participated in the assessment proceedings upon given a notice and he has attended to those proceedings, he is expected to co-operate and explain all the points raised against him by the Assessing Authority during the course of such assessment proceedings itself and the Assessing Authority cannot be pinned down to give everything in writing to him in advance by way of proposition notice before hand and take his objections in writing and then decide them separately and thus in the process delaying the assessment proceedings endlessly.

10. The breach of principles of natural justice which is allowed to be raised as a ground of maintaining a writ petition under Article 226 of the Constitution of India, notwithstanding availability of the statutory appeal remedy to the assessee's is not of this kind of alleged breach which is not even a breach of natural justice on the part of the Assessing Authority, but it is only that certain contentions raised before the Assessing Authority which he has all the powers to accept or reject such contentions of the assessee giving his own reasons, were not so accepted as raised. The factual aspects of the assessment proceedings cannot be gone into by this Court under Article 226 of the Constitution of India and the assessee cannot be allowed to invoke the writ jurisdiction of this Court bypassing at least two Appellate Forums provided under the law, the first appeal before the Deputy Commissioner and the Second appeal before the Tribunal.

11. These Authorities constituted under the provisions of the KVAT Act are the only appropriate fact finding bodies before whom, all these grievances raised before this Court, can certainly be raised by the petitioner-assessee and the petitioner-assessee cannot call upon this Court to look into the minute details and the nitty-gritty of the factual aspects of the order passed by the Assessing Authority and to hold an enquiry as to whether the proposition notice and the assessment orders tally or do not tally, whether the additions made in the turnover

is correct or not, whether there are arithmetic errors in the same or not, whether the Assessing Authority was justified in rejecting the rectification application of the assessee, not correcting the alleged apparent errors on the face of the assessee or not.

12. The moment this Court finds that a notice was given to the assessee and he has participated in the assessment proceedings, the wolf cry of the assessee that principles of natural justice have been breached by the Assessing Authority deserves to be given a quietus and the Court's time spent in looking into these kind of details in the assessment order cannot be allowed to be wasted for the case of the petitioner-assessee on the purported ground of breach of natural justice which is only flimsy ground raised by invoking the writ jurisdiction. The same does not entitle the petitioner- assessee to bypass and ignore regular appellate remedies provided in the law for this purpose.

13. Law, it is said, is a notorious laggard. It does not reach out as science does. It follows social consensus which is itself behind the need of the times. The mantle of omniscience and infallibility i.e., supposed to descend on a judicial court by reason of its constitutional status alone is a worn-out cliché. This is amply proven by the state of the superior constitutional courts today. Litigations linger on for generations. It is the result of unscientific, non-productive, petrified procedures and a history of wasted judicial time over routine non-judicial repetitive motions in courts without any value addition to the decision-making process. The courts would be committing, unthinking and unilateral, disarmament against acclaimed injustice. Each court has its own peculiar problems and needs specially tailored case-flow management techniques. One size does not fit all. The serious problem is that superior courts, which do not have the expertise to effectively monitor the work of expert assessing authorities have adopted a top-down remote-control model. A system which does not have an auxiliary adjudicative support from the subordinate Tribunals under the taxing statutes for the elimination of exaggerated claims and time-consuming motions, can only perpetuate the problem and not solve it.

14. From a survey recently conducted, it is stated therein that only about 10 per cent of cases from trial courts go to the High Courts; from High Courts to the Supreme Court it is less than 1.5 per cent. The place where things really happen is the trial court and within the trial system including Tax Departments. The problems of the superior courts in their correctional jurisdiction arises from the failure of the trial system. The result is loss of man hours, wages, and productivity on account of non-productive, idle listing of cases, estimated at Rs.50,387 crores a year, apart from the actual wasted expenses, estimated at nearly Rs.30,000/- crores a year.

15. Recently, Hon ble the Chief Justice T.S.Thakur in the Hon ble Supreme Court in the case of In Board of Control for Cricket v. Cricket Assn, of Bihar [(2016) 8 SCC 535], on the compliance with the principles of natural justice, has held as under:-

Principles of natural justice, it is well settled, are not codified rules of procedure. Courts have repeatedly declined to lay down in a straitjacket, their scope and extent. The extent, the manner and the application of these principles depends so much on the nature of jurisdiction exercised by the court or the tribunal, the nature of the inquiry undertaken and the effect of any such inquiry on the rights and obligations of those before it. The extent of the application of the principles also depends upon the fact situation of a given case".

16. Therefore, this Court is fully satisfied that the present writ petition does not deserve to be entertained on merits at all.

17. As far as the judgment of Paharpur Cooling's case (supra), relied upon by the learned counsel for the petitioner is concerned, the same is found to be not applicable to the facts of the present case. In that case before the Court, the Court allowed the Writ Appeal of the assessee on the ground that Audit report was considered by the Assessing Authority without being confronted to the assessee and the Assessment Authority had not applied his mind judiciously to the same. With great respects, even if on its own facts, the Writ appeal came to be allowed by the Division Bench of this Court, that cannot be treated as a binding precedent for mandatory entertaining of such writ petitions in all the cases upon such an allegations, even though the Court comes to the conclusion otherwise that an

enquiry into complex facts is required to be made by the fact finding appellate forums prescribed under the law. It is a judgment in persona applicable to the case before the court only in that and is not a judgment in rem applicable in all such other cases, where a discretion about entertaining the writ petition is available to the Court. There cannot be any color matching comparison of such cases and this case is not found to be on all fours with the case in hands.

18. In the present case, the petitioner-assessee has contended before the Court that certain documents, details and purchase registers etc., were produced before the Assessing Authority which were not analysed and discussed by him and a specific proposition notice was not given to him before hand on that basis of certain inputs of audit report which were also not confronted to him. All these questions require a deep enquiry into the allegations and averments made by the petitioner, which cannot be done in writ jurisdiction and which can only be gone into by the fact finding bodies under the Act.

19. Under the provisions of the KVAT Act, the remedy before this Court is only by way of Revision available only on a question of law arising in the matter under Section 65 of the Act and therefore, the intention of the law is to provide only it as a final Appellate forum only on the questions of law arising from the orders passed by the Assessing Authority and Appellate Authorities under the Act, which questions of law have not already been decided by the superior constitutional courts like the High Court and Supreme Court.

20. A lenient approach of the Court in this regard allowing writ petitions to be entertained against the assessment orders directly, is only likely to consume lot of precious public time of the Court, whereas, ultimately, after a detailed and time consuming analysis of facts, the Court may come to the conclusion that there is not even sufficient material before the Court to pronounce upon the individual contentions and factual issues raised before it. Therefore this Court is of the considered opinion that writ petition against the assessment orders, where the concerned taxing law provides for appeal mechanism, cannot be usually entertained.

21. The narrow parameters for invoking writ jurisdiction under Article 226 of the Constitution of India, notwithstanding the appeal remedy available to the petitioner have to be very strictly construed. The contingencies like, question of validity and vires of the relevant statute or Rules or Notifications is involved, whether the assessee concerned has been saddled with the financial liability without any sort of opportunity of hearing given to him, is not to be lightly invoked in all such cases merely on the basis of the allegations and averments made in the writ petitions.

22. Only a prima-facie look at the facts about the opportunity being given to the assessee or not and whether the question of vires as raised is really involved or not, can be looked into at the first blush. Even question validity of Rules cannot be allowed only as a tangent ground for maintaining the writ petition. That should be a serious challenge, which prima-facie requires interpretation and analysis by the constitutional courts and because those questions cannot be left to be determined by the authorities created under the Act itself. No deeper enquiry into the submissions of the nature made in the present case, can be legitimately undertaken in exercise of writ jurisdiction under Article 226 of the Constitution of India.

23. The contentions raised before this Court in the present case as observed above, could all have been raised before the Appellate Authorities without any doubt. For the reasons best known to the petitioner- assessee, the petitioner- assessee ignored and bypassed these remedies. The writ jurisdiction in such circumstances cannot be allowed even to overcome the lapse of the limitation for the petitioner- assessee at this belated stage.

24. For these reasons, this Court is satisfied that the present writ petitions do not deserve to be entertained on merits and the same are liable to be dismissed and the same are accordingly dismissed. This Court is not imposing any costs on the petitioner- assessee with a note of caution recorded that if such cases of this nature are found to be flooding the dockets of this Court in future, the Court may give up this leniency in favour of Revenue rather than exercising its discretion in favour of the assessees.