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Pawan Kumar and Co. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Mar-13-1987

Reported in : [1988]173ITR394(Raj); [1988]68STC194(Raj)

Judge : M.C. Jain and; K. Bhatnagar, JJ.

Acts : Rajasthan Sales Tax Act, 1954; Constitution of India - Article 226

Appeal No. : D.B. Civil Writ Petition No. 836 of 1987

Appellant : Pawan Kumar and Co.

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : K.C. Bhandari, Adv.

Judgement :

1. This writ petition is directed against the order dated April 25, 1986 (exhibit 2) of the Additional Commissioner, Commercial Taxes Department, Rajasthan, Jaipur, the assessment order (exhibit 3) dated February 28, 1987, and the notice of demand (exhibit 4). The assessment order dated February 28, 1987 (exhibit 3), is appealable and, admittedly, the appeal lies to the Deputy Commissioner, Commercial Taxes. Counsel for the petitioner urged that in view of the circular letter of the Additional Commissioner (exhibit 2), the remedy of appeal has been rendered futile as the circular letter would dominate the appellate proceedings and the appellate order which may ultimately be passed by the Deputy Commissioner.

It may be stated that the circular letter is only administrative in character, whereas the assessing authorities act as quasi-judicial authorities and being quasi-judicial authorities, they are required to decide the questions which may arise before them in accordance with law after hearing the assessees. It is expected of the quasi-judicial authorities to discharge their functions and duties in their capacity as such in a quasi-judicial manner, in no way inhibited by any administrative orders and circulars.

2. So far as the present matter is concerned, under the Rajasthan Sales Tax Act, second appeal is also maintainable before the Tribunal and, ultimately, the matter may come to this court in revision. So, there is an elaborate machinery provided under the Rajasthan sales tax law. In view of the statutory remedy being available to the petitioner, we do not feel persuaded to invoke our extraordinary jurisdiction under Article 226 of the Constitution. The period of filing the appeal has not yet expired as stated by counsel for the petitioner and so the petitioner may yet file the appeal.

3. We feel it necessary to emphasise that the appellate authorities and superior officers should also refrain from issuing instructions and circular letters, whereby, the hearing and decisions by the quasi-judicial authorities are impaired and prejudiced and the parties before them may feel that they will not get justice as the subordinate authorities may feel bound by those instructions and circular letters. The superior authorities should leave the subordinate authorities to hear and decide the matters with an open mind fully considering the contentions which may be advanced before them.

4. We would also like to observe that of late a tendency has been growing to rush to this court invoking its extraordinary jurisdiction bypassing the alternative statutory remedy available to the petitionersunder the Central laws and State laws like the Panchayat Act, Co-operative Societies Act, Municipalities Act, Colonisation Act, Payment of Wages Act, Rajasthan Irrigation & Drainage Act and various other laws, whichever may be applicable, defeating the very object of providing remedies under these laws and this court is unnecessarily flooded with petitions under Article 226 of the Constitution of India. The petitioners should know that the

remedy under Article 226, should be availed of only when an alternative adequate remedy is not available. All orders contrary to law and other illegalities and irregularities can be set right by pursuing statutory remedies. Appeals, second appeals and revisions are provided for in statutes and rules only with a view to correct the errors in the orders and decisions of the subordinate authorities. Approaching this court without recourse to statutory remedies results in consumption of the time of this court in the filing of replies, rejoinders, amendment applications and several other applications, affidavits, counter-affidavits, additional affidavits and documents before matters become ripe for hearing. If the matter comes after exhaustion of all legal remedies, this court's precious time in the aforesaid proceedings can be saved and so, in our considered opinion, this growing tendency deserves to be curbed.

5. The writ petition is, therefore, dismissed on the ground that the petitioner has got an alternative statutory remedy available to him. In case the petitioner files the appeal, we consider it proper to direct the appellate authority to dispose of the appeal within a period of one month and till then, no coercive action shall be taken against the petitioner for recovery of the tax assessed by the Assistant Commercial Taxes Officer, Circle-III, Bhilwara, for non-payment of the same.

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