Tin Plate Co. Of India Ltd vs State Of Bihar And Ors on 5 November, 1998

Equivalent citations: AIR 1999 SUPREME COURT 74, 1998 (8) SCC 272, 1998 AIR SCW 3398, (1998) 7 JT 442 (SC), 1999 (1) ALL CJ 398, 1999 (1) BLJR 276, 1998 (6) SCALE 36, 1998 STI 125, 1999 (1) SRJ 68, 1998 (8) ADSC 249, 1998 (7) JT 442, (1999) 47 KANTLJ(TRIB) 73, (1998) 79 ECR 497, (1998) 3 SCJ 499, (1999) 112 STC 543, (1998) 8 SUPREME 305, (1998) 6 SCALE 36, (1999) 1 ANDH LT 8

Author: V.N. Khare

Bench: S.P. Bharucha, V.N. Khare

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           CASE NO.:
Appeal (civil)  1782 of 1997

PETITIONER:
TIN PLATE CO. OF INDIA LTD.

RESPONDENT:
STATE OF BIHAR AND ORS.

DATE OF JUDGMENT: 05/11/1998

BENCH:
S.P. BHARUCHA & V.N. KHARE

JUDGMENT:
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JUDGMENT 1998 Supp(2) SCR 547 The Judgment of the Court was delivered by V.N. KHARE, J. The appellant herein is a Company registered under the Indian Companies Act having its registered office at Bankshal Street, Calcutta in the State of West Bengal and factory at Jamshedpur in the State of Bihar. The appellant manufactures tinplates and black plates in its factory at Jamshedpur and is registered under the Bihar Sales Tax Act and Central Sales Tax Act.

For the assessment year 1985-86, the appellant bad filed its return. The Commercial Tax Officer by its order dated 01.12.93, assessed the appellant under the Central Sales Tax Act for the period 1.4.85, to 31.3.86, after disallowing the appellant's entire claim of stock transfer to outside States and treating the same as inter-state sales and thus levied tax @ 10% thereon. In pursuance of the said assessment order the Commercial Tax Officer issued a notice of demand for a sum of Rs.4,53,50,430. The appellant challenged the aforesaid assessment order and the notice of demand by means of a writ petition under Article 226 of the Constitution before the High Court of Judicature at Patna, In the said writ petition, the respondents therein raised a preliminary objection that in

view of an alternative remedy being available to the appellant, the petition deserves to be rejected. The High Court accepted the objection of the respondents in the writ petition and dismissed the same primarily on the ground that, the appellant has an equally efficacious alternative remedy. However, the High Court while throwing out the writ petition on the ground of alternative remedy, made certain observations touching upon the merits of the case. The appellant, in view of the fact that the petition was dismissed on the ground of alternative remedy available to it, filed an appeal against the order of assessment before the Joint Commissioner of Commercial Taxes (Appeals) along with an application for condoning the delay in filing the appeal in view of the pendency of the writ petition before the High Court.

The joint Commissioner of Commercial Taxes(Appeals) rejected the appeal filed by the appellant at the stage of admission in view of the observations made by the High Court. The Appellate Authority, while rejecting the appeal observed that the delay in filing the appeal could have been condoned, but since the High Court has not given any direction to admit the appeal on merits, the appeal cannot be entertained. Under such circumstances, the appellant filed a review application in the High Court but the same was rejected by an order dated 27.8.96. It is in this way the appellant has come to this Court by filing a special leave petition.

Learned counsel appearing for the appellant urged that the High Court has committed grave error in making various observations touching upon the merits of the case while dismissing the writ petition on the ground of alternative remedy and thereby prejudicing the case of the appellant to be taken up before the Appellate Authority who was bound to decide the case in terms of the observations made by the High Court, The argument is well substantiated. It is no doubt true that when an alternative and equally efficacious remedy is open to a person, he should be required to pursue that remedy and not to invoke extraordinary jurisdiction of the High Court under Article 226 of the Constitution and where such a remedy is available, it would be a sound exercise of discretion to refuse to entertain the writ petition under Article 226 of the Constitution. In the present case, admittedly, the appellant had an alternative and equally efficacious remedy by filing an appeal before the Appellate Authority against the order of assessment and in view of such a remedy being available to the appellant, the High Court was right in dismissing the writ petition on me ground that me appellant has an alternative remedy available under the Bihar Sales Tax Act. However, we do not subscribe to the view of the High Court when it made a number of observations touching upon the merits of the case while dismissing the writ petition on the ground of alternative remedy. If the writ petition under Article 226 is to be dismissed on the ground of alternative remedy, the High Court is not required to express any opinion on merits of the case which is to be pursued before an alternative forum. It is true that in the present case the appellant's counsel in his effort to get over the objection of existence of an alternative remedy, addressed the Court on merits of the case and thereby invited the observations on merits of the case by the High Court But in such a situation if the High Court is to dismiss the writ petition on the ground of alternative remedy, it would be a sound exercise of jurisdiction to refrain itself from expressing any opinion on the merits of the case which ultimately is to be taken up by a person before an alternative forum.

In the present case, in view of the observations made by the High Court, the Appellate Authority has rejected the appellant's appeal at the threshold and the appellant has been left without any remedy

under the law. In such circumstances, we are of the view that the observations made by the High Court in its judgment on merits of the case was totally un-called for and deserves to be set aside. Consequently, we set aside the observations made by the High Court in the judgment under appeal to the extent they relate to the merit of the case which was the subject matter of appeal before the Sales Tax Appellate Authority. Since the Appellate Authority under the Act observed that delay could have been condoned and also the fact that the appellant has deposited 20% of the tax, we set aside the order of the Appellate Authority dated 22.6.96 and restore the appeal to the file of Joint Commissioner of Commercial Taxes(Appeals), who shall decide the appeal expeditiously on its own merit without being influenced by any of the observations made by the High Court in me writ petition.

The appeal is thus allowed in part. There shall be no order as to costs.