4
27.09.2024
sb
Ct 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 21828 of 2024

M/s. Venkateshwara Hatcheries
India Private Limited Company
Versus
State of West Bengal & Ors.

Mr. Sandeep Sachdeva
Mr. Devang Bhasin
Mr. Vaisakh Nair
Ms. Pooja Sah
... For the petitioner.

Mr. Anirban Ray, Ld. GP
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. N. Chatterjee
... For the State.

1. Challenging the review order dated 20th June, 2024, passed by the West Bengal Commercial Taxes Appellate and Revisional Board, the instant writ petition has been filed. The petitioner also prays for a declaration that the S. No. 559 of "Commodity wise rate of taxes" as published on the website of the Directorate of Commercial Taxes, which states the Process Food (Air-tight pack) with Brand Name (Specified elsewhere) fall under residual entry of Schedule CA to the West Bengal Value Added Tax Act, 2003, attracts VAT @ 14.5 per cent, being non-existent entry under the tariff schedule to the West Bengal VAT Act, 2003 (hereinafter referred to as the "said Act") has been issued without authority and is ultra-vires the provisions of the said Act as well as the Articles 14, 19 and 265 of the

Constitution of India.

2. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the State, at the very outset, opposing the present writ petition would submit that the present writ petition may not be maintainable before this Court since the said Act is a specified Act within the meaning of Section 2(k) of the West Bengal Taxation Tribunal Act, 1987 (herein after referred to as the “Tribunal Act 1987”), and the petitioner questions action taken under the said Act and also questions an entry thereunder.

3. Mr. Sachdeva, learned advocate appearing in support of the writ petitioner would submit that the petitioner is engaged in the business of selling processed poultry products like, chicken Nuggets, Chicken Cutlets, Chicken Sheek Kabab and the like since 2013. In order to manufacture such processed meat products the petitioner undertakes various processes like cutting, grinding of poultry products.

4. In accordance with the provisions of the said Act, the petitioner in usual course had discharged 5 per cent VAT on sale of the aforesaid category of products in accordance with the S. No. 58A of the Schedule C of the VAT Act. Such classification of goods was accepted by the respondents and was never disputed in any of the assessment proceedings for the previous years.

5. However, based on Entry No. 559 of the "Commodity wise rate of tax" which was published on the website of the respondents which according to him has no legal backing and force, the respondents have suo moto reopened the assessment for the financial year 2015-16 and have directed the petitioner to discharge VAT on processed meat products @ 14.5 per cent in accordance with S. No. 559 of the said Act read with Schedule CA of the said Act. The aforesaid suo moto revisional order dated 17th March, 2022 passed under Section 85 of the said Act, was challenged by the petitioner before the Revisional Board, which was registered as Case No. 197 of 2022-23. The same was disposed of by an order dated 20th June, 2024 which forms subject matter of challenge in the present writ petition. He would submit that the petitioner questions the very jurisdiction of the respondents to include S. No. 559 in the "Commodity wise rate of tax" as published by the Directorate of Commercial Taxes on the ground that the same is ultra vires the Act and the Constitution. According to him since, the very basis of the revisional order and the subsequent review order is under challenge as being ultra-vires to the provisions of the said Act, this Hon'ble Court in exercise of its extraordinary jurisdiction is competent to entertain the same. In support of his contention, he has placed reliance on a judgment delivered by the Hon'ble

Supreme Court in the case of **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others** reported in **(2023) 109 GSTR 402**.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. Since the point of maintainability has been raised, this Court proceeds to examine the same. I find that the said Act is a specified Act as defined in Section 2(k) of the Tribunal Act 1987. In this case the petitioner not only questions the action of the respondents in relation to the levy and assessment of tax under the specified Act but also questions the validity of an entry published by the respondents as ultra-vires the said Act and the Constitutional provisions. I may note that the main thrust of the argument of the petitioner is that since, the constitutional validity of the particular entry notified under the said Act is under challenge, the taxation Tribunal is incompetent to entertain the same. He has also contended that since the jurisdictional issue is involved, this Hon'ble Court in exercise of its power is competent to entertain the writ petition.

7. To test out the aforesaid contention as regards maintainability of the writ petition as opposed to entertainability, it is necessary to consider the provisions of Sections 6 and 14, of the Tribunal Act 1987 having regard to the admitted position that the said Act

is a specified Act as defined in Section 2(k) read with the schedule to the Tribunal Act 1987. To appreciate the provisions of Sections 6 and 14, of the Tribunal Act 1987, the same are reproduced herein below:

> ***"6. Jurisdiction, powers and authority of the Tribunal.—****(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, with effect from such date as may be specified by the State Government by notification in this behalf, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts including the High Court but excluding the Supreme Court of India for adjudication or trial of disputes or complaints or offences with respect to all matters of levy, assessment, collection and enforcement of any tax under any specified State Act and matters connected therewith or incidental thereto:*
>
> *Provided that where the matter relates to disposal of question of constitutional validity of any provision of any specified State Act, the matter shall be decided by a Bench constituted of at least three Members of which the Chairman shall be one.*
>
> *(2) Notwithstanding anything contained elsewhere in this Act, all proceedings triable by any Court or Courts in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall continue to be tried by such Court, and the Tribunal shall have no jurisdiction to try such proceedings.*

Explanation.—For the purpose of this sub-section, proceedings shall include proceedings under Chapter XXIX and Chapter XXX of the Code of Criminal Procedure, 1973.

14. Exclusion of jurisdiction of Courts.— *On and from the date from which jurisdiction, powers and authority becomes exercisable under this Act by the Tribunal, the High Court or any Civil Court except the Supreme Court of India shall not be entitled to entertain any proceeding or to exercise any jurisdiction or shall not have any jurisdiction, powers and authority in relation to the adjudication or trial of disputes, complaints or offences with respect to levy, collection, assessment and enforcement of any tax under any specified State Act and any matter connected therewith or incidental thereto."*

8. Having regard thereto, and considering the judgment delivered by the Hon'ble Supreme Court in the case of ***L. Chandra Kumar v. Union of India & Ors.***, reported in **(1997) 3 SCC 261** and an unreported judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Reckitt Benckiser (India) Ltd. & Anr. v. The Commissioner of Commercial Taxes & Ors.***, on 3rd September, 2013, I find that the matter does not only relate to question limited to entertainability but as regards maintainability of the writ petition by this Court under Article 226 of the Constitution of India especially, having regard to the provisions contained in Section 6 of the Tribunal Act

1987. Although Mr. Sachdeva would submit that the entry S No. 559 is under challenge as being ultra vires to the provisions of the said Act and having regard to the jurisdictional issue being raised, the writ petition is maintainable before this Court, I, however, notice that the Hon'ble Supreme Court in **L. Chandra Kumar** (supra) in paragraphs 90 and 93 had been pleased to answer the identical issue by observing as follows:-

> ***'90.*** *We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to*

the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

93. *Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will,* *however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.'*

9. Having regard thereto, and the specific observation of the Hon'ble Supreme Court wherein it held that the Tribunals will consequently also have the power to test the vires of subordinate legislations and rules, however, this power of the tribunal will be subject to one important exception that the tribunal shall not entertain any question regarding the vires of their parent statutes following the settled principle that a tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional, and since the petitioner only questions an entry under the said Act as ultra vires the said Act, the writ petition, in my view is not maintainable before this Court at the first instance. Although, Mr. Sachdeva has placed lot of stress on the judgment delivered in the case of **Godrej Sara Lee Ltd**. (supra) to drive home the point that this Hon'ble Court in exercise of its constitutional writ jurisdiction is competent to entertain a writ petition of this nature, I find that the facts based on which the judgment was delivered in the case of **Godrej Sara Lee Ltd**. (supra) are entirely different. The question that fell

for consideration in the said special leave petition was whether the High Court was justified in declining interference on the ground of an alternative remedy in the form of an appeal under Section 33 of the VAT Act. Such is not the case here. In the instant case, the order passed by the West Bengal Commercial Taxes Appellate and Revisional Board, having regard to the provisions contained in Section 5, 6 and 14 of the Tribunal Act 1987 can only be questioned before a Tribunal with a right of a further judicial review before the Divisional Bench under Article 226 of the Constitution of India. In view thereof, I am unable to accept the contentions of Mr. Sachdeva and the judgments cited by him do not assist the petitioner.

10. At this stage, Mr. Sachdeva would submit that an opportunity may be granted to the petitioner to approach the tribunal within a further period of two weeks from date. I am of the view, since this Court does not have the jurisdiction to take up this matter, no such liberty can be afforded to the petitioner.

11. With the above observation, the writ petition stands dismissed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)