

TIN PLATE CO. OF INDIA LTD.

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v.

STATE OF BIHAR AND ORS.

NOVEMBER 5, 1998

[S.P. BHARUCHA AND V.N. KHARE, JJ.]

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Constitution of India—Article 226—Jurisdiction of the High Court—In cases an efficacious alternative remedy available to the writ petitioners—Scope of—Held, it would be a sound exercise of discretion to refuse to entertain the writ petition—However, while dismissing the writ petition on such ground, High Court should refrain from expressing any opinion touching upon the merits of the case—Practice and Procedure—Writ petition—Alternative remedy.

C

Appellant, manufacturer of tinplates, was registered under State Sales Tax Act as well as Central Sales Tax Act. For a particular assessment year the appellant filed its return. The Commercial Tax Officer disallowed the entire claim of stock transfer to outside States and treating the same as inter-State sales and levied tax @ 10% thereon and issued a notice of demand. The appellant challenged the assessment order and the notice of demand in a writ petition before the High Court. The High Court accepting the objection of respondent that the appellant had an equally efficacious alternative remedy, however, made certain observations touching upon the merits of the case. The appellant filed an appeal against the assessment before the Joint Commissioner of Commercial Taxes (Appeals) along with an application for condoning the delay in view of the pendency of the writ petition before the High Court. The Joint Commissioner of Commercial Taxes (Appeals) rejected the appeal in view of the observation made by the High Court on the merits of the case. Appellant then filed a review petition before the High Court but the same was rejected. Hence this Appeal.

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It was contended by the appellant that certain observations of the High Court touching upon the merits of the case while dismissing the writ petition filed by the appellant on the ground of efficacious alternative remedy has prejudiced the case of the appellant before the Appellate Authority who was bound to decide the case in terms of the observations made by the High Court.

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A Allowing the appeal, this Court

HELD : 1.1. 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,

B it would be a sound exercise of discretion to refuse to entertain the writ petition under Article 226 of the Constitution. [550-B]

1.2. If a writ petition 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. Thus, if the

C 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 by a person before an alternative forum. [550-D-E]

1.3. 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, 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. [550-F]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1782 of 1997.

F From the Judgment and Order dated 6.6.96 of the Patna High Court in C.W.J.C. No. 404 of 1994.

H.N. Salve, M.P. Jha, Nikhil Sakhardhande, Ram Ekbal Roy and Pawan Kumar for the Appellant.

H.L. Aggarwal, B.B. Singh and Kumar Rajesh Singh for the

G Respondents.

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,

H 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. A

For the assessment year 1985-86, the appellant had 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. B C D E

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. F G

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 H

A 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 the ground that the 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.

F 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 **H** 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 the writ petition. A

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

R.K.S.

Appeal allowed.