

M/S. Hy Lay Poultry Farms

Vs

State of Harayana

Civil Appeal No. 681 of 1976

(P.N. Bhagwati, N.L. Untwalia, Syed M. Fazal Ali JJ)

16.08.1976

JUDGMENT

BHAGAWATI, J. -

1. This is an appeal by leave directed against the judgment of High Court of Punjab and Haryana rejecting a writ petition preferred by the appellants in limine without issuing a rule to the respondent. The writ petition sought to challenge an assessment order made by the Additional Excise and Taxation-cum-Assessing Authority, Karnal assessing the appellant to sales tax for the assessment year 1970-71 in respect of certain the Central Sales Tax Act, 1956. The main Question which was raised in the writ petition was whether in the circumstances of the case, it could be said that the transfer of chicks from Karnal to Delhi made by the appellant during the assessment year 1970-71, was by way of inter-State sales or intra-state sales. Now the same question under identical set of facts was also raised in the assessment of the appellant for the assessment year 1969-70 and it was decided against the appellants by the Sales Tax Tribunal but the record shows that it has been referred by the sales Tax Tribunal to the High Court shows that it was been referred by the Sales Tax Tribunal to the High Court for determination, though the High Court does not appear to have received the reference so far. The appellant, on the basis of this reference, argued before the High Court that the Writ petition in respect of the assessment year 1970-71 should be admitted and should be heard along with the reference since, the question arising in both the proceedings was identical. The high Court, However, rejected the writ petition in limine on the ground that the appellant had an alternative remedy under the sales tax law, and in the circumstances, this was not a fit case in which the High Court should interfere in the exercise of its direction. The appellant being aggrieved by this order preferred the present appeal with special leave obtained from this Court.

2. Now, its is true that ordinarily the High Court would not ne justified in entertaining a writ petition which seeks to challenge the assessment for a particular assessment year, if there is an alternative remedy available to the applicant under the sales tax law and it would not be a valid argument for the applicant to say that reference on a similar point in respect of an earlier assessment year is pending before the High Court. That is a situation which is bound to arise in a number of cases and many assessments would be held up, resulting in great detriment to the revenue, if the High Court were to start entertaining writ petitions merely on the ground that a reference on the same question is pending in respect of an earlier assessment year. The High Court should ordinarily, in such cases, ask the applicant to pursue his remedy under the statue and come up before it by way of a reference. But here we find that, according to the appellant, the facts and circumstances in which the sales of chicks took place in the assessment year 1970-71 are identical with those for the assessment year 1969-70 and moreover, the only question which arises for determination in the assessment for the assessment year 1970-71 is the same as that which forms the subject-matter of reference before the

High Court in respect of the assessment year 1969-70. Having regard to these peculiar facts and circumstances of the present case, we think that this is an exceptional case in which a departure from the usual rule would have been justified and the Writ petition should have been admitted and heard by the High Court along with the reference. Of course we may make it clear that we do not wish to suggest that if the reference is decided in favour of the appellants by the High Court, that should necessarily lead to allowing of the Writ petition. Even though the point of law arising in the reference may be decided by the High Court in favour of the appellants, the question may still have to be considered whether there are any other grounds available to the respondent on which it may still resist the Writ petition and ask for its dismissal. These are all matters which the High Court will have to consider after the reference is disposed of by it.

3. We accordingly allow the appeal, set aside the order passed by the High Court rejecting the Writ petition in limine and direct the High Court to admit the Writ petition and issue a rule so that the Writ petition may be heard along with the reference. So far as the question of stay is concerned, it was strongly submitted by Mr. Goswami on behalf of the respondent that no be allowed to obtain a stay of recovery of the tax assessed by filing a writ petition, when he would not ordinarily be able to do so in a reference. We are not considering the question of stay in the present proceedings since the High Court will bear this objection in mind and give due consideration to it, if and when an application for stay of recovery of the tax is made before it. The reference may be disposed of by the High Court at an early date after it is received from the tribunal. There will be no order as to costs of the appeal.

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