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(G. R. Majithia, J.)

indeed, it is not the case in which the Court should in the exercise of its extra ordinary jurisdiction under Article 226 of the Constitution quash the impugned order of the Deputy Commissioner.

In the result, the appeal is dismissed leaving the parties to bear their own costs.

S.C.K.

Before Hon'ble G. R. Majithia & S. K. Jain, JJ.

INDIAN OIL CORPORATION LTD.,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1413 of 1990.

January 3, 1994.

Punjab General Sales Tax Act 1948—S. 39—Constitution of India, 1950—Art. 226—Writ Petition challenging order of assessment—Statutory remedy of appeal not availed—Exercise of writ jurisdiction.

Held, that the petitioner corporation has got an equally efficacious remedy by way of appeal/revision under the Act. The power to exercise an extraordinary writ jurisdiction under article 226 of the Constitution declined.

(Para 5)

R. C. Chawla Senior Advocate and R. C. Dogra, Sr. Advocate
with Renu Sehgal and Sushil Dogra, Advocate, for the
Petitioners.

Anand Swaroop, Senior Advocate, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) Indian Oil Corporation Ltd. has challenged the validity of the order dated December 21, 1989, passed by the Assessing Authority, Jalandhar-I, for the Assessment Year 1986-87.

(2) Challenge has been made to the finding of the Assessing Authority that the petitioner-Corporation is engaged in the sale of L.P.G. in cylinders and sale and purchase of L.P.G. and its enjoyment is not possible without cylinders and regulators. Therefore,

the supply of cylinders and regulators is integral and incidental to the transaction of sale/purchase of L.P.G. The counsel maintains that this findings is not warranted.

(3) We are not inclined to express any opinion on the merits of the submission made.

(4) Learned counsel for the respondents has raised a preliminary objection that the petitioner-Corporation has got an equally efficacious remedy by way of appeal. The petitioner-Corporation challenged the order of the Assessing Authority for the Assessment Year 1984-85 decided on June 13, 1989 through CWP No. 3495 of 1989. The same was dismissed by a Division Bench of this Court on June 23, 1989, observing thus :—

“No ground to interfere in view of our judgment rendered in C.W.P. No. 7880 of 1989 dated June 23, 1989. Dismissed. However, the petitioner shall avail the statutory remedy available against the order of the Assessing Authority.”

In C.W.P. No. 7880 of 1989, the petitioner-Corporation had challenged the order of the revisional authority under Section 40 of the Haryana General Sales Tax Act, 1973 and a Division Bench of this Court declined to entertain the writ petition observing thus :—

“The petitioner has an equally efficacious remedy by way of an appeal under Section 39 of the Act. When a right or liability is created by a statute which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. The question arising for determination depends upon appreciation of evidence. We decline to interfere in the matter until all the statutory remedies are exhausted. It will be useful to refer to the dictum laid down by the Apex Court in *Titaghur Paper Mills Co. Ltd. & another v. State of Orissa and another* (1), which reads as under :—

“Under the Scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer

an appeal before the prescribed authority under sub-section (1) of section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then as for a case to be stated upon a question of law for the opinion of the High Court under section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Art. 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willies : J. in *Wolverhampton New Water Works Co. v. Hawkesford*, (1959) 6 CB (N.S.) 336 at page 356, in the following passage :—

“There are three classes in which a liability may be established founded upon statute. xxx xxx
xxx xxx But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time given a special and particular remedy for enforcing it. xxx xxx
xxx, the remedy provided by the statute must be followed, and it is not competent to the party to pursue course applicable to cases of second class. The form given by the statute must be adopted and adhered to.”

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Newspaper Ltd.* (1919) A.C. 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tabago v. Gordon Grant & Co.* (1935) A.C. 532 and *Secretary of State v. Mask & Co.*, A.I.R. (1940) P.C. 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petition in limine.”

The learned counsel for the petitioner submitted that Section 25(5) of the Act is violative of Article 14 of the Constitution. He has not laid any foundation in the writ petition as to how the provisions are violative of Article 14 of the Constitution nor he could substantiate the same during the course of his arguments. We decline to interfere until all the statutory remedies are exhausted."

(5) We do not find any distinguishing features in the instant petition. It is not disputed that the judgment rendered in C.W.P. No. 8495 of 1989 decided on June 23, 1989 was not assailed by the Corporation in the apex Court. The learned counsel submits that the said judgment will not operate as *res judicata* as during each assessment year a fresh cause of action arises, to the petitioner. There can be no quarrel with this proposition. We decline to exercise our extraordinary jurisdiction under Article 226 of the Constitution for the simple reason that the petitioner-Corporation has got an equally efficacious remedy by way of appeal/revision under the Act.

(6) Learned counsel then submitted that the appeal against the order of the Assessing Authority had become time barred. If the petitioner-Corporation files an appeal against the order of the Assessing Authority within thirty days from the date of receipt of the copy of this judgment, the respondents will not raise the plea of limitation and the appellate authority will entertain the appeal and dispose of the same on merits, provided the conditions for filing the appeal are fulfilled by the petitioner. It is further directed that the appellate authority will dispose of the appeals pending before it expeditiously.

For the reasons stated above, the writ petition is disposed of as indicated above.

S.C.K.

Hon'ble G. R. Majithia & S. K. Jain, JJ.

CAPT. KANWALJIT SINGH AND ANOTHER,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 14327 of 1992.

January 27, 1994

Constitution of India, 1950—Art. 226/227—Essential Commodities Act 1955—Milk and Milk Products Order 1992—Milk & Milk