

TAX FLASH NEWS

10 February 2023

Writ applications cannot be dismissed merely on the grounds that alternative remedy of appeal is available

The Supreme Court of India¹ has asserted that dismissal of a writ petition by a high court on the ground that the petitioner has not availed an alternative remedy without examining whether an exceptional case has been made out for, would not be proper.

Facts of the case

- The Appellant is engaged in manufacturing, marketing and selling household insecticide products (i.e. mosquito repellent). Assessing Authority issued notices for the year 2003-04 and 2004-05 to show cause as to why tax liability at the rate of 10 per cent instead of 4 per cent should not be imposed on mosquito repellent. The Appellant contended that in view of the decision of the Haryana Tax Tribunal, the rate of 4 per cent on mosquito repellent containing Allethrin is correct. The Assessing Authority accepted the contention of the Appellant and passed orders classifying the goods at the rate of 4 per cent instead of 10 per cent.
- The Revisional Authority, in the exercise of suo motu powers under section 34 of the Haryana VAT Act, 2003, modified the assessment orders and classified mosquito repellents at the rate of 10 per cent instead of 4 per cent, relying on the Supreme Court decision in the case of Sonic Electrochem which had held that jet mat is a mosquito repellent and will be covered under entry 129 of Schedule II Part A of Gujarat Sales Tax Act, 1969. The rate of sales tax for goods falling in this entry was twelve paise in a rupee.

- Appellant filed a writ petition before the Punjab and Haryana High Court challenging the jurisdiction of the Revisional Authority to exercise suo motu revisional powers to reopen the assessment order. The High Court dismissed the writ petition of the Appellant on the grounds of the availability of an alternative remedy of appeal.
- Aggrieved by the decision of the High Court, the Appellant filed an appeal before the Supreme Court.

Appellant's contentions

The Haryana Tax Tribunal, in its order dated 21 November 2001, held that the decision of the Supreme Court was in relation to a specific entry under Gujarat Sales Tax Act and there is no such entry in Haryana VAT Act. Accordingly, mosquito repellent containing Allethrin is liable to a concessional tax rate. With this background, the contention of the Appellant is as follows:

- The Assessing Authority had passed the assessment order considering the decision of the Haryana Tax Tribunal, which had distinguished the Supreme Court decision (supra). Since this decision of the Tribunal has attained finality, Revisional Authority should not have assumed jurisdiction to suo motu issue the impugned show cause notices as well as the final revisional orders, holding that mosquito repellent, being unclassified goods, are taxable at the general rate of tax.
- Revisional Authority is bound by the decisions of the Tribunal.

Revenue's contentions

In terms of the decision of the Supreme Court (supra), Revisional Authority is right in finding that mosquito repellents manufactured and sold by the Appellant were liable to tax at the rate of 10 per cent and not at 4 per cent as assessed by Assessing Authority.

¹ Godrej Sara Lee Ltd v. The Excise And Taxation Officer-Cum-Assessing Authority & Ors. [2023-VIL-10-SC]

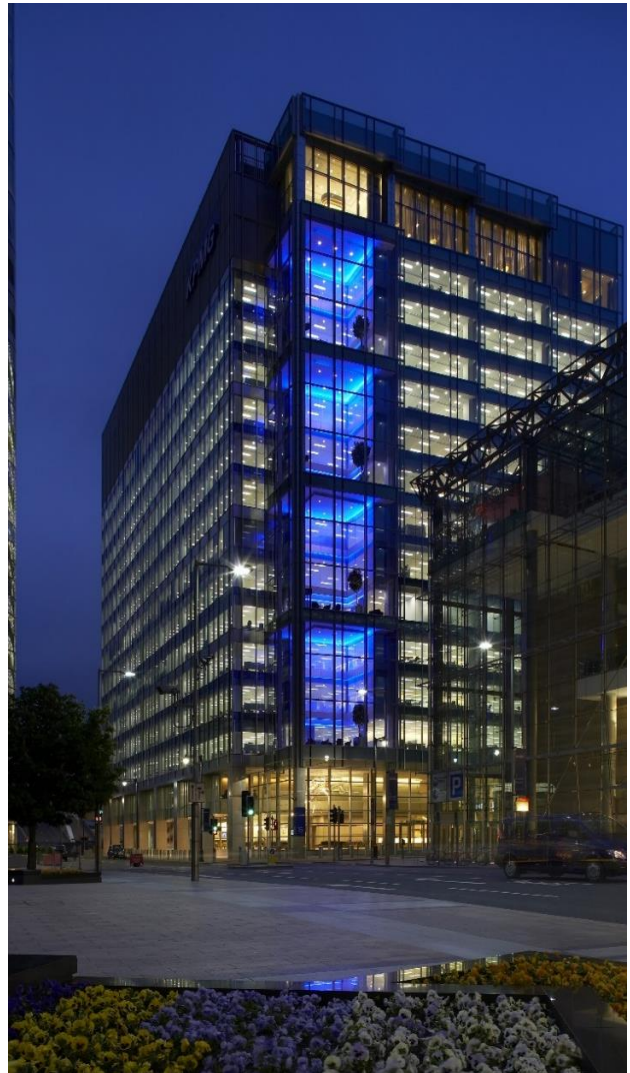
Supreme Court's decision

Supreme Court allowed the appeal in favour of the Appellant and invalidated the revisional assessment orders. The prominent inferences pronounced by the Court after analysing several other judgements are as follows:

- The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself.
- The mere fact that the petitioner is before the high court without pursuing an alternative remedy cannot mechanically be construed as a ground for dismissal of an appeal.
- Dismissal of a writ petition by a high court on the ground that the petitioner has not availed an alternative remedy without examining whether an exceptional case has been made out for, such entertainment would not be proper.
- Since a jurisdictional issue was raised by the Appellant in the writ petition questioning the very competence of the Revisional Authority to exercise suo motu power, being a pure question of law, the plea raised in the writ petition did deserve consideration on merits and the Appellant's writ petition ought not to have been thrown out at the threshold.
- The High Court, by dismissing the writ petition, committed a manifest error of law for which the order under challenge is unsustainable, and the same is set aside.
- Revisional Authority might have been justified in exercising suo motu power to revise the order of the Assessing Authority had the decision of the Tribunal been set aside, or its operation stayed by a competent Court.

Our comments

This decision could be helpful in cases where appeals are rejected on the grounds that an alternative remedy of appeal is available. This judgement also clarifies that when the jurisdiction of the proper officer is in question, it is a question of law and therefore, writ petitions should be allowed by High Courts.



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