

1961

October 31.

## RAMSARAN DAS AND BROS.

v.

COMMERCIAL TAX OFFICER, CALCUTTA  
AND OTHERS(B. P. SINHA, C. J., J. L. KAPUR, M. Hidayatullah,  
J. C. SHAH and J. R. MUDHOLKAR, JJ.)*Supreme Court—Practice—Appeal by special leave from order of assessment—Maintainability—Statutory remedies to be exhausted first—Constitution of India, Art. 136.*

In respect of its business as a middleman relating mainly to sales of coal and coke in the course of inter-State trade, the appellant firm was assessed to Central sales tax under s. 8(2) of the Central Sales Tax Act, 1956, by the Commercial Tax Officer. The appellant without availing itself of the remedies under the Act, applied for and obtained special leave to appeal under Art. 136 of the Constitution of India directly against the order of assessment. When the appeal was taken up for hearing, the question was raised as to whether it should be entertained, when even the facts had not been finally determined by the final fact-finding authority under the Act, nor had the jurisdiction of the High Court been invoked to exercise its powers under the Act.

*Held*, that an assessee is not entitled ordinarily to come up to the Supreme Court directly against the judgment of the Assessing Authority and invoke the Court's jurisdiction under Art. 136 of the Constitution without first exhausting the remedies provided by the taxing statutes.

*Mahadaya Premchandras v. Commercial Tax Officer, Calcutta*, [1959] S. C. R. 551 and *The State of Bombay v. M/s. Ratilal Vedital*, [1961] 2 S. C. R. 367, explained.

*Chandi Prasad Chokhani v. The State of Bihar*, [1962] 2 S. C. R. 276 and *Kanhaiyalal Lohia v. Commissioner of Income-tax, West Bengal*, [1962] 2 S. C. R. 839, followed.

*Held*, further, that in the present case, in which there were no special circumstances and in which the facts had not yet been finally determined, the appeal must be considered to be incompetent.

CIVIL APPELLATE JURISDICTION : Civil Appeal  
No. 592 of 1960.

Appeal by special leave from the judgment and order dated June 17, 1959, of the Commercial Tax Officer, Calcutta, in case No. 54(c) of 1959-60.

*N. C. Chatterjee* and *S. C. Mazumdar*, for the appellants.

*B. Sen* and *P. K. Bose*, for respondents Nos. 1 and 2.

*K. N. Rajagopal Sastri* and *T. M. Sen*, for respondent No. 3.

1961. October 31. The Judgment of the Court was delivered by

SINHA, C. J.—This is a direct appeal by special leave granted by this Court on September 7, 1959, against the order, dated June 17, 1959, passed by the first respondent—the Commercial Tax Officer—assessing the appellant to central sales tax amounting to Rs. 42,647 odd, for the period July 30, 1957 to March 31, 1958, under the Central Sales Tax Act (LXXIV of 1956)—which hereinafter will be referred to as the Act. The second respondent is the State of West Bengal, and the third respondent is the Union of India.

In view of the order we propose to make in this case, it is not necessary to state in any detail the facts and circumstances leading up to this appeal. The appellant is a partnership firm, under the Indian Partnership Act, with its principal place of business at 18, Netaji Subhas Road, Calcutta, within the jurisdiction of the first respondent. The appellant alleges that he carries on business of two kinds, namely, (1) of a dealer in coal and coke, and (2) of a middleman bringing about sales of coal and coke between colliery owners and consumers. In respect of its business as a dealer, the appellant is a registered dealer under the Bengal Finance (Sales Tax) Act (Bengal Act VI of 1941). Its second business as a middleman relates mainly to sales of coal and coke in the course of inter-State trade or commerce, and the tax in question relates to this second branch of its business. The Act came into operation in the State of West Bengal on July 1, 1957, when the appellant

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applied for and obtained a certificate of registration under the Act on July 30, 1957. In May 1958, the appellant made its return under the Act in respect of the period aforesaid, showing the turnover as nil. But in spite of its showing cause against the proposed assessment, the first respondent determined Rs. 9,17,196 as the appellant's turnover in respect of the period aforesaid and assessed central sales tax thereon at Rs. 42,647-82nP. under s. 8(2) of the Act, and issued Demand Notice. The appellant moved this Court and obtained the special leave to appeal from the order of the first respondent making assessment, and later a demand on the basis of the assessment.

From the statement of facts given above, it is clear that the appellant did not exhaust all his remedies under the Act itself, and came directly to this Court as if the Order of Assessment passed by the first respondent was final. The question, therefore, arises whether this Court should entertain the appeal, when even the facts have not been finally determined by the final fact-finding authority under the Act, nor has the jurisdiction of the High Court been invoked to exercise its power under the Act. But Mr. Chatterjee, on behalf of the appellant, has contended in the first instance that the powers of this Court are wide enough to enable him to approach this Court direct, when according to him, there had been an assessment of tax without the authority of law. There is no doubt that the powers of this Court under Art. 136 of the Constitution are as wide as they could be, because, unlike the preceding articles of the Constitution, there is no limitation that the Judgment, decree or order should be final in the sense that the appellant in this Court has exhausted all the remedies provided by law before invoking the jurisdiction of this Court to grant "special leave to appeal from any judgment, decree determination sentence or order in any case or matter passed or

made by any Court or Tribunal in the territory of India." In spite of the wide amplitude of the jurisdiction of this Court to entertain appeals by special leave, this Court has imposed certain limitations on its own powers for very good reasons, and has refused ordinarily to entertain such appeals when the litigant has not availed himself of the ordinary remedies available to him at law. But Mr. Chatterjee, on behalf of the appellant, invited our attention to the decision of this Court in *Mahadaya! Premchandra v. Commercial Tax Officer, Calcutta* <sup>(1)</sup> in which this Court interfered with the order of assessment passed by the Commercial Tax Officer of Calcutta, and this Court had been moved by way of special leave to appeal against the original order of the Taxing Officer. It is claimed on behalf of the appellant that that decision completely covers the points in controversy in the present case also. It is contended that that was also a case, like the present one of commission agents who had been charged sales tax. There are several reasons why the authority of that decision cannot be invoked in favour of the appellant on the preliminary question whether this Court should at all entertain the appeal. In that case, in the reported decision, of this Court, no such question, as we have to determine, had been raised. Apparently, counsel for both the parties were anxious to have the final determination of the controversy by this Court. Secondly, there were special circumstances in that case, which are not present in the instant case. The most outstanding feature of that case was, as pointed out by this Court, that the Assessing Authority had not exercised its own judgment in the matter of the assessment in question. The Assessing Authority had, contrary to its own judgment, taken instructions from the Assistant Commissioner and followed those directions. This Court had also pointed out that even

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though the Assessing Authority was satisfied on the materials placed by the assessee that he was not liable to pay sales tax, he carried out the directions of a superior officer. This Court further pointed out that there had been complete failure of justice on account of the fact that the assessee had been given no opportunity to meet the points made by the Assistant Commissioner, and the assessment order was made behind his back. The Court was led to make the following very significant observations :

“The procedure adopted was, to say that least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales-tax Department concerned. We would have, simply on this ground, set aside the assessment order made by the first respondent and remanded the matter back to him for his due consideration in accordance with law, but as the matter is old and a remand would lead to unnecessary harassment of the appellants, we have preferred to deal with the appeal on merits.” (p. 560).

It was in those circumstances that this Court went into the whole controversy on its merits and determined the appeal in favour of the assessee. That case, therefore, is no precedent in favour of the appellant.

The next case relied upon by the counsel for the appellant is *The State of Bombay v. M/s. Ratilal Vadilal* <sup>(1)</sup>. That was a case in which the State of Bombay had appealed to this Court on special leave against the order of the Sales Tax Tribunal, Bombay, by which the Tribunal had allowed the appeal before it and set aside the order of the Collector of Sales Tax, under the Bombay Sales Tax Act. The respondents in that case were commission agents doing business as clearing and

(1) [1961] 2 S.C.R. 367.

transport contractors. They had applied to the Collector of Sales Tax, Bombay, for the determination of the question if they could be called "dealers" within the meaning of the Act, after giving the facts and circumstances of their case. In that case also no steps had been taken to have a reference made to the High Court, and this Court observed that it had been frequently noticed that appeals had been filed to this Court without exhausting all the remedies open to appellants and that ordinarily this Court would not allow the High Courts to be bypassed and the appropriate course for an appellant was to exhaust all his remedies before invoking the jurisdiction of this Court under Art. 136 of the Constitution. But this Court went into the merits of the case because both the parties invited the Court to do so and did not insist upon the preliminary issue being decided. It is clear, therefore, that neither of the two cases relied upon by counsel for the appellant is an authority for the proposition that he can come up to this Court on special leave directly against the judgment of the Assessing Authority, without exhausting all his remedies under the Act.

There are cases in which this Court was moved directly against the order of assessment, after ignoring the orders of the High Court refusing to have a reference made, or deciding the point referred, against the assessee. In those circumstances, this Court refused to entertain the appeal and held that the appellant was not entitled to invoke the jurisdiction of this Court under Art. 136, without coming up in appeal from the final decision *inter partes* given by the High Court. The latest decision of this Court on that question is the case of *Chandi Prasad Chokhani v. The State of Bihar* <sup>(1)</sup>. In that case, the previous decisions of the Court have all been considered *in extenso*. We are in entire agreement with what has been laid down by this Court in that batch of cases. Another decision of a Division Bench of

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this Court is the case of *Kanhaiyalal Lohia v. Commissioner of Income Tax, West Bengal* (1). In that case, this Court has taken the same view and dismissed the appeal as 'incompetent.'

The present case is a much simpler one, in which there are no special circumstances and in which the facts have not yet been finally determined. It may also be noted that the appellant has not challenged the vires of the Act or of any other law. We, therefore, think that we should dismiss this appeal as 'incompetent', without expressing any opinion on the merits of the controversy. It will be open to the appellant to take such steps as it may be advised, in pursuing such remedies as may be available to it under the law. The appeal is accordingly dismissed, but in the circumstances without costs.

*Appeal dismissed.*

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