appointment to the service. We have, therefore, no hesitation in rejecting the contentions raised by the petitioners in this regard.

(17) In the result CWP 11874 of 1999 is dismissed whereas CWPs 6982, 6354 of 2000 and 1113 of 2001 are partly allowed and the Commission is directed to determine suitability of all the nominated candidates whose service record was sent to it and recommended to the State Government the name of all such persons who are found suitable leaving it to the Government to make appointments in accordance with law. There is no order as to costs.

R.N.R.

Before Jawahar Lal Gupta and Ashutosh Mohunta, JJ

M/S MONGA RICE MILLS,—*Petitioner*

Versus

STATE OF HARYANA AND ANOTHER—*Respondents*

C.W.P. No. 8532 of 2000

28th August, 2001

Constitution of India, 1950—Arts. 226 and 286—Central Sales Tax Act, 1956 (Act No. 33 of 1996)—Ss. 5 and 15 (ca)—Haryana General Sales Tax Act, 1973—S.12—Instructions dated 29th November, 2000 issued by the Haryana Government —Levy of purchase tax on the paddy purchased by a miller for sale of rice to an exporter—Paddy and rice—Distinction between —Separate commodities—Cl. (ca) of S. 15 of the 1956 Act treats rice and paddy as a single commodity only in respect of the transaction covered by S. 5 (3)—S. 5 (1) exempts levy of tax on the sale of rice by an exporter to a foreign buyer and S.5 (3) exempts on the purchase of rice by an exporter from a miller—The transaction of purchase of paddy by a miller for sale of rice directly to a foreign buyer covered under section 5 (3) whereas transaction of purchase of paddy by a miller for sale of rice to an exporter not covered either under section 5(3) of the 1956 Act or under section 12 of the 1973 Act—Petitioner held liable to pay tax on the purchase of paddy—State Government issuing instructions inviting the attention of the

authorities to a decision of the jurisdictional Court—No legal infirmity in issuing such administrative instructions—Invoking of jurisdiction under Art. 226 without exhausting the remedy of appeal—Whether bar to the maintainability of the writ petition—Held, no—However, matters involving facts and investigation into transactions cannot be dealt with in proceedings under Art. 226—Writ dismissed and the petitioner permitted to file an appeal, if any, against the orders of assessment.

Held, that a perusal of Section 14(i) (i and ii) of the Central Sales Tax Act, 1956 clearly shows that paddy and rice are two separate commodities. By introducing Cl. (ca) of Section 15, the distinction has been fictionally obliterated for the purposes of sub-section (3) of Section 5. The provision has not obliterated the distinction completely. It has treated rice and paddy as one commodity for a limited purpose. By this amendment, it has enabled the millers who are direct exporters to avoid pavment of tax on the purchase of paddy. However, this benefit has not been made available to those millers who sell to an exporter and do not export directly. The Parliament is the best judge of the interests of the peopel. It enacts statues on the basis of needs made manifest by experience. The provision introducing limited fiction is within the constitutional parameters. It strikes a reasonable balance. We are unable to extend this fiction beyond what the express words of the status provide.

(Paras 20 and 35)

Further held, that the sale and purchase by the exporter are exempted. The sale by the exporter are exempted by virtue of the provision in Clause (1) and the purchase is covered under Clause (3) of Section 5 of the Central Act. Any transaction preceding the purchase of rice by the exporter is not treated as a sale or purchase in the course of export of goods. Thus, it is not covered by the provision for exemption from the levey of tax under the Statute.

(Para 36)

Further held, that the existence of an alternative remedy is not an absolute bar to the maintainability of a petition under Article 226 of the Consitutiton. It is also correct that when the vires of a statutes are involved or an issue of constitutional importance arises,

the citizen may be normally entitled to invoke the jurisdiction on the High Court under Article 226. However, in matter involving facts and an investigation into transactions, the writ Court has an apparent handicap. Normally, it cannot record evidence and give findings on questions of fact. These have to be invariably determined by the authorities under the status. It is only when an order passed by a quasi-judicial authority suffers from an error apparent on the record or is in violation of a statutory provision that the Court intervenes by the issue of a writ of certiorari.

(Para 38)

Further held, that the discretion vested by law in a statutory authority cannot be controlled by the issue of administrative instructions. However, in the present case, the attention of the authorities has been invited only to the decision of the jurisdictional court. Thus, it cannot be said that merely by bringing the decision to the notice of the authorities, the State Government has cabined, controlled or confined their discretion.

(Para 42)

M.L. Sarin, Senior Advocate with M/s. B.K. Jhingan and Avneesh Jhingan, Advocates, *for the petitioner.*

Surya Kant, Advocate General, Haryana with Palika Monga, AAG, Haryana, *for the respondent.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) Is the paddy purchased by a millar who sells the rice to the exporter not exigible to the levy of purchase tex ? This is the primary question that arises for consideration in this bunch of 53 writ petitions. CWP No. 4379 of 1999 involving this issue had been admitted by a Bench of this Court. It was on the daily Board of this Bench. The remaining 52 petitions were listed for preliminary hearing on July 31, 2001. Counsel for the parties made a request that all the petitions be heard and disposed of together. Consequently, we have heard these petitititions. Learned counsel for the parties have referred to the facts in CWP No. 8532 of 2000. These may be briefly noticed.

(2) The petitioner has a shellar. It purchases paddy, processes it and sells rice. Herein, we are concerned with the sale of rice to an exporter who sold it to a foreign buyer. The petitioner claims that in view of the provisions of Article 286 of the Constitution and Section 5 and 15 (ca) of the Central Sales Tax Act, 1956 (hereinafter referred to as the 1956 Act), the State cannot levy purchase tax on the paddy purchased by it for sale of rice to the exporter.

(3) The petitioner filed sales tax returns for four assessment years viz. 1996-97 to 1999-2000 in accordance with the provisions of Section 25 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the 1973 Act). It deposited the tax which fell due in accordance with the return. The petitioner claimed that no purchase tax was leviable on the paddy which was shelled to fulfil the contract of sale of rice by the exporter to the foreign buyer. This claim was made on the basis of the provisions of Section 15 (ca) and Section 5 of the Central Sales Tax Act.

(4) On August 16, 1999, the Sales Tax Tribunal accepted a similar claim made by a dealer from Sirsa viz. M/s Veerumal Monga & Sons in the matter of Sales Tax Appeal No. 698 of 1998-99. However, the State of Haryana filed a review petition under Section 41 of the Haryana General Sales Tax Act and claimed that the order was contrary to the provisions of law. The plea of the State was accepted. *Vide* order dated May 15, 2000, the Tribunal held that the assessee was not entitled to the exemption from the payment of purchase tax on paddy.

(5) In pursuance to the order passed by the Tribunal, the assessing authority issued notices to the petitioner to show cause as to why tax, interest and penalty be not levied. Copies of the notices are at Annexures P.3 to P.6 with the petition.

(6) The petitioner appeared before the Assesseing Authority. It produced the necessary forms on record to show that the rice had been actually exported out of India by the exporter who had a prior order from the foreign buyer. It claimed that no tax was leviable. Thus, the question of charging interest or imposing penalty did not arise.

(7) While the matter was pending before the Assessing Authority, the petitioner approached this Court through the present writ petition. A Bench of this Court directed the issue of notice of motion. The respondents filed a written statement. Alongwith the reply, copies of the assessment orders were collectively produced as Annexures R.1. The petitioner amended the writ petition so as to challenge not only the notices at Annexures P.3 to P.6 but also the orders of assessment, copies of which have been produced as Annexures P.11 to P.14.

(8) The petitioner maintains that the action of the respondents in treating purchase of paddy as exigible to the levy of tax is contrary to the provisions of Sections 5 and 15 (ca) of the 1956 Act. It prays that the notices as well as the orders of assessment be quashed.

(9) The respondents placed reliance on the written statement filed in reply to the original unamended petitions. In this written statement, it has been *inter alia* averred that the petitioner is a registered dealer. It is engaged in the purchase, husking of paddy and selling of rice. Since the purchase tax had not been paid, notices were issued to the petitioner "for levy of purchase tax by way of provisional assessment under Section 28-B of the State Act. The petitioner did not join proceeding before the assessing authority to represent its case by submitting a reply to the notice. Assessment orders in respect of notices issued to the petitioner were passed on merits, (copies of order enclosed as Annexure R.1). The petitioner has a right of appeal from that order. It has approached the Hon'ble Court without exhausting the remedy of appeal..." On this basis, it is maintained that the writ petition is not maintainable.

(10) On merits, it has been pointed out that the purchase of paddy in the circumstances of the case is exigible to the levy of tax. The effect of Section 15(ca) is only to "over-ride the effect of this Hon'ble Court's judgment in *United Riceland Limited and another* v. *The State of Haryana and others (1)* in as much as the purchase of paddy by the rice miller-cum-direct exporter by virtue of legal fiction of Section 5(3) became purchases in the course of export under Section 5(3) of the Central Act. But this legal fiction does not extend further to the present petitioner who purchased paddy from the market in his

(1) (1997) 104 STC 362

own right and milled" it. The sale of rice by the petitioner to the direct exporter is sale in the course of export out of India. Section 5(3) does not protect the purchase of paddy by the petitioner. Thus, the claim as made by the petitioner has been controverted. It has been further pointed out that the petitioner's claim that its representative had appeared before the assessing authority on 26th June, 2000 or that it had sought permission to place 'H' forms or S. T. 15-A forms on record is false.

(11) The respondents maintain that no case for invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution is made out. The grounds as raised by the petitioner have been controverted. It is prayed that the writ petition be dismissed with costs.

(12) Mr. M.L. Sarin, learned counsel for the petitioners contended that the State cannot impose tax on the sale or purchase of goods bought or sold in the course of export. Paddy and rice and special goods. The distinction between paddy and rice having been obliterated by the Parliament by introuducing Section 15(ca), the State was not competent to levy and tax on the purchase of paddy as the rice had been sold to the exporter who had a prior order of purchase from a foreign buyer. He further contended that the legal fiction by which the distinction between rice and paddy has been obliterated has to be given full effect and thus, the impugned notices as well as the orders of assessment cannot be sustained. It was further contended that in view of the constitutional issues raised in the petitions, the remedy of appeal could not operate as a bar to the maintainability of the writ petition. According to the learned counsel, even the orders of provisional assessment were wholly arbitrary as the matter had remained pending with the assessing authority for a long time.

(13) The claim made on behalf of the petitioners was controverted by Mr. Surya Kant, Advocate, General, Haryana. He submitted that the action of the authorities was in strict conformity with law. The amendment in the Central Act was only intended to benefit the miller who directly exported the goods to a foreign buyer. It does not afford any benefit to the millers who purchased paddy and sold rice to the exporter. With regard to the orders of provisional assessment, the counsel submitted that the petitioners have effective

alternative remedies under the Act. No ground for invoking the writ jurisdiction is made out.

(14) After hearing counsel for the parties, we find that the following two questions arise for the consideration of this Court :—

(i) Is the purchase of paddy by the petitioner exigible to the levy of purchase tax ?

(ii) Should the petitioners be relegated to the remedies under the Act in so far as the challenge to the orders of assessment is concerned ?

Reg: (i)

(15) The sale of goods can be intra-state or inter-state. When sale or purchase takes place in the course of inter-state trade by virtue of the provisions of Article 269(1)(g), the tax can be levied and collected by the Government of India. However, it has to be assigned to the States in accordance with "such principles of distribution as may be formulated by Parliament by law". Under Article 286, certain limitations have been placed on the power of the State to levy tax on the sale or purchase which takes place "in the course of import into or export out of India". The Parliament has the power to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Article 286(1) by promulgating law. Still further, by virtue of Entry 54 in List-II, the power to impose taxes on "sale or purchase of goods other than newspapers" vests in the State. This power is subject to Entry 92A in List-I which empowers the Parliament to levy "taxes on imports and exports". The obvious purpose is to ensure that the tax imposed by the State does not interfere with the foreign as well as inter-state trade and commerce as these are matters of national importance. Under Article 286(3), the law promulgated by the State in so far as it provides for the levy of tax " on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce....be subject to such restrictions and conditions in regard to the assessment of levy of rates and other incidents of tax as Parliament may by law specify". Thus, in matters relating to inter-State trade and commerce as well as imports and expots of goods of special importance, the Constitution recognises the supremacy of the Parliament in so far as the imposition of sales tax etc. is concerned.

(16) In exercise of the power under the Constitution and in the interest of national economy, the Parliament has enacted the 1956 Act. One of the basic objects was to authorise the State Governments to levy and collect tax on the sale or purchase of goods in the course of inter-State trade. It was also intended to fix the situs of the sale or purchase of goods.

(17) The provisions of the 1956 Act were enforced during the years 1957 and 1958. Chapter-I primarily contains provisions of a preliminary nature. It defines the various expressions used in the Statute. Chapter-II embodies the principles "for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import or export". Chapter-III deals with the levy of inter-State sales tax. The provision regarding sale or purchase of goods in the course of import or export is contained in Section 5. A reference to this provision shall be made at the appropriate stage. Chapter-IV deals with goods of special importance. Paddy and rice are mentioned as separate items. Section 15 deals with restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. It is referable to the provision of Article 286(3) (a) of the Constitution. By Act 33 of 1996, clause (ca) was added to the provision. Thus, the relevant provision reads as under :—

> "where a tax on sale or purchase of paddy referred to in sub-clause (i) of section 14 is leviable under the law and the rice procured out of such paddy is exported out of India, then, for the purposes of sub-section (3) of section 5, the paddy and rice shall be treated as a single commodity".

(18) A perusal of the above provisions shows that while interpreting a State law which imposes a tax on the sale or purchase of declared goods, the restriction contained in clause (ca) has to be kept in view. What is the restriction? When a tax on sale or purchase of paddy is leviable under the State law and the rice "procured out of such paddy is exported out of India, paddy and rice shall be treated as a single commodity "for the purposes of sub-section (3) of Section 5". The Parliament has introduced a limited fiction. It is only in respect of the transaction covered by clause (3) of Section 5 that rice and paddy are treated as a single commodity.

(19) Mr. Sarin was at pains to point out that the primary reason for amendment of Section 15 by introducing Clause (ca) was to grant the "benefit of exemption from tax" and to avoid indirect taxing of rice. This was intended to promote export. Thus, the counsel contended that the respondents cannot be permitted to treat paddy and rice as two separate commodities. Is it so ?

(20) A perusal of Section 14(i) (i and ii) clearly shows that paddy and rice are two separate commodities. By introducing Clause (ca), the distinction has been fictionally obliterated "for the purposes of sub-section (3) of Section 5". The provision has not obliterated the distinction completely. It is only in respect of the cases covered by Section 5(3) of the 1956 Act that a fiction has been introduced. For the purpose of levy of Central Sales Tax in case of inter-State trade, paddy and rice are still two separate commodities. However, in a case where the rice procured out of the paddy is exported out of India, the two are treated as a single commodity for the limited purpose of Section 5(3).

(21) What does Section 5 postulate ? It reads as under :—

> 5. "When is a sale or purchase of goods said to take place in the course of import or export— (1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.
>
> (2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.
>
> (3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the

sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

(22) Clauses (1) and (3) deal with export of goods. Clause (2) deals with the import of goods. In the present case, we are only concerned with the export. Thus, Clause (2) is not relevant. Clause (1) covers the purchase of goods which occasions the export. In other words, the sale by the exporter or the purchase by the foreign buyer is covered. Clause (3) deals with the sale or purchase preceding the export. In other words, the purchase by the exporter is fictionally treated as being in the course of export.

(23) What is the position in the present case ? The petitioner is a miller. It buys paddy from the commission agent for milling. Having processed it, the petitioner sells rice to the exporter. Then the exporter sells the rice to the foreign buyer. Clause (1) exempts the sale by the exporter to the foreign buyer. Clause (3) which was introduced in the year 1976 exempts the penultimate sale which occasions the export viz. the sale of rice by the miller to the exporter or the purchase by the exporter from the miller. However, the sale of paddy by the commission agent to the petitioner is not covered by any of the provisions of Section 5.

(24) Mr. Sarin contended that such an interpretation would completely defeat the object of the Parliament in introducing clause (ca) in Section 15. Is it so ?

(25) On August 17, 1995, a Full Bench of the High Court decided the case of *United Rice Land Limited and another* vs. *The State of Haryana and others, (supra).* It was *inter alia* held that paddy and rice are declared goods under Section 14 of the Central Sales Tax Act, 1956. These are two different commodities subject to tax under Section 6 read with Sections 15-A and 17 of the Haryana General Sales Tax Act, 1973. Thus, dealers were held liable to pay purchase tax on paddy which is dehusked and exported out of India as rice. It deserves notice that the petitioners viz. *United Riceland Ltd. and*

others were "admittedly exporters of rice outside India". They purchased "paddy from the States of Punjab and Haryana..... for the purposes of dehusking it for export of rice outside India." thus, they were held liable to pay purchase tax on paddy. The result was that on account of paddy and rice being two different commodities, even the exporter of rice was liable to pay tax on the purchase of paddy. In other words, it got no benefit under Section 5(3) of the Central Act. To alleviate this hardship, the Parliament introduced Clause (ca) and provided that for the transaction covered by clause (3), paddy and rice shall be treated as a single commodity. Nothing more. As a result, a miller who purchases paddy and sells rice to the foreign buyer, is exempted from payment of purchase tax. However, in case, the miller only sells it to a mediator viz. the exporter, the transaction of purchase of paddy by the miller is not covered under Clause (3).

(26) Mr. Sarin referred to the provisions of Section 12 of the Haryana General Sales Tax Act. It *inter alia* provides that "a tax on the sale or purchase of goods shall not be imposed under this Act. . . . where such sale or purchase takes place in the course of import of the goods into or export of the goods out of the territory of India." Thus, in a case where a sale or purchase takes place in the course of export of goods, the tax shall not be leviable under the State Act. However, the question as to when can the sale or purchase be said to take place in the course of export, has to be decided with reference to Section 5 of the Central Act. Thus, when Sections 12 and 5 are read together, it is clear that no tax is payable under the state Act on the purchase and sale by the exporter. The statute does not regard the purchase of paddy by the miller from the commission agent as a part of sale or purchase in the course of export.

(27) Mr. Sarin also referred to the provisions of Section 27(1)(a)(iv) of the State Act to contend that transactions falling under Section 12 are excluded from the taxable turn-over of the dealer. It is undoubtedly so.However, as noticed above, the transactions involved in the present case are not covered by Section 12.

(28) Mr. Sarin submitted that paddy and rice are goods of special importance. A special provision obliterating the distinction having been made, the fiction must be given full effect. He referred

to the decisions in *East end Dwellings co. Ltd.* vs. *finsbury Borough council, (2) State of Andhra Pradesh vs. Vallabhapuram Ravi (3) The Commissioner of Income-Tax Patiala* vs. *Shri Saroop Krishan (4) and in M Gannon Dunkerley and Co. and others* vs. *State of Rajasthan and others (5).*

(29) Under Section 17 of the Haryana Act, the tax on declared goods is leviable at the stage indicated in Schedule 'D'. On the perusal of the schedule, it is clear that the taxable event when the commodity is imported into the State, is at the stage of "first sale within the State by a dealer liable to pay tax under this Act." When the goods are purchased within the State, the stage of levy is "last purchase within the state by a dealer liable to pay tax. ....." This provision would have been relevant if the fiction introduced by Section 15(ca) was not limited to the transaction covered by clause (3) of Section 5. The Parliament itself having limited the scope of fiction, the court cannot extend the benefit to a transaction which is not covered by the provisions. That shall do violence to the plain language of the provision.

(30) It is undoubtedly true that in case of East end Dwellings (supra), their Lordships were pleased to observe as under :—

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompained it. . . . The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that State of affairs."

(31) This principle has been recognised in various decisions by the Apex Court as well as this Court. However, the petitioners in these cases can derive no advantage from this decision in view of the fact that the Parliament has introduced the fiction for a limited purpose.

(2) 1951 (2) All England Reports 587
(3) 1984 (4) SCC 410
(4) 1985 (2) PLR 109
(5) 1993 (1) SCC 364

It is within the parameters laid down by the Parlaiment that the principle can be applied. Not beyond that.

(32) Mr. Surya Kant had referred to the decision in *Veerumal"s* case (supra). Counsel for the petitioners was at pains to point out that the decision does not embody the correct statement of law. In view of our above conclusion, we do not find any merit in this contention raised by Mr. Sarin.

(33) In fairness to the Advocate General, it may be mentioned that he had referred to the decisions of various courts viz. in *Consolidated Coffee Ltd.* vs. *Coffee board, Bangalore, (6) Nikka Trading Corporation of India Ltd.* vs. *State of Andhra Pradesh, (7) Bismillah and Company* vs. *State of Andhra Pradesh, (8) Mohammed Ishaq and Sons* vs. *Commissioner of Commercial Taxes in Karnataka, Bangalore, (9) and Sovereign Spices* vs. *State of Kerala, (10).* However, in view of our conclusion, we do not consider it necessary to notice each case separately.

(34) Mr. Sarin laid great emphasis on the fact that the purpose of the Legislature was to promote exports. Thus, it had introduced a fiction so that our prices were competitive with other countries. Consequently, we should not give a restricted meaning to the provision.

(35) It is undoubtedly true that the nation needs foreign exchange. Thus, it takes steps to encourage and promote exports. However, it equally relevant to remember that even the revenues of the State are important. One cannot sacrifice the State's interests totally. Keeping in view the needs to strike a balance, the Parliament appears to have introduced a limited fiction. It has treated rice and paddy as one commodity for a limited purpose. By this amendment, it has enabled the millers who are direct exporters to avoid payment of tax on the purchase of paddy. However, this benefit has not been made available to those millers who sell to an exporter and do not export directly. The Parliament is the best judge of the interests of the people. It enacts statutes on the basis of needs made manifest by

(6) (1980) 46 STC 164
(7) (1996) 100 STC 142
(8) (1989) 73 STC 135
(9) (1992) 87 STC 36
(10) (1998) 110 STC 429

experience. The provision introducing limited fiction is within the constitutional parameters. It strikes a reasonable balance. We are unable to extend this fiction beyond what the express words of the statute provide.

(36) In view of the above, the first question is answered against the petitioners. It is held that the sale and purchase by the exporter are exempted. The sale by the exporter is exempted by virtue of the provision in Clause (1) and the purchase is covered under Clause (3) of Section 5. Any transaction preceding the purchase of rice by the exporter is not treated as a sale or purchase in the course of export of goods. Thus, it is not covered by the provision for exemption from the levy of tax under the Statute.

Reg: (ii)

(37) Mr. Sarin contended that constitutional issues are involved. In view of the decision of their Lordships of the Supreme Court in *Pardip Port Trust* vs. *Sales Tax Officer and Others, (11)* the remedy of appeal etc. can be no bar to the maintainability of the writ petition. He also submitted that the orders of provisional assessment, copies of which have been produced on record are unfair. Mr. Surya Kant on the other hand submitted that the impugned orders have been passed under Section 28-B of the Act. The petitioners have a stautory remedy under Sections 39 and 41 of the Act. In any event, the Advocate General stated on instructions from Mr. S.K. Yadav, Joint Director (Legal), that in case, the petitioners file an appeal within the time that may be granted by the court, the State shall not raise the objection regarding limitation.

(38) It is undoubtedly true that the existence of an alternative remedy is not an absolute bar to the maintainability of a petition under Article 226 of the Constitution. It is also correct that when the vires of a statute are involved or an issue of constitutional importance arises, the citizen may be normally entitled to invoke the jurisdiction of this Court under Article 226. However, in matters involving facts and an investigation into transactions, the writ court has an apparent handicap. Normally, it cannot record evidence and given findings on questions of fact. These have to be invariably determined by the

(11) JT 1998 (4) SC 483

authorities under the statute. It is only when an order passed by a quasi-judicial authority suffers from an error apparent on the record or is in violation of a statutory provision that the court intervenes by the issue of a writ of certiorari.

(39) In the present case, the correctness or otherwise of the returns filed by each of the petitioners has to be determined. It may require appraisal of records for different years. This matter cannot be dealt with in proceedings under Article 226 of the Constitution. In any event, the purely legal issue having been decided, the matter should now be examined by the appropriate authority under the statute. In this situation, we direct that in case, the petitioners have any grievance against the orders of provisional assessment, they would be entitled to file an appeal within 30 days from the date of the reciept of a certifed copy of this order. In case, such an appeal is filed, it shall be considered and decided by the appropriate authority under the statute on merits. It shall not be rejected on the ground of limitation.

(40) Thus, even the seocnd question is answered against the petitioners.

(41) Mr. Jhingan, counsel for the petitioner, in CWP No. 5856 of 2001 raised an additional ground. He urged that vide letter, dated 29th November, 2000, Annexure P. 2 with the petition, the State Government has issued instructions to the quasi-judicial authorities that they have to consider the cases for assessment and levy of sales tax in the light of the decision in Veerumal's case *(supra)*. He submitted that the action of the authority in giving directions to quasi-judicial Tribunals is illegal and untenable.

(42) It is undoubtedly correct that the discretion vested by law in a statutory authority cannot be controlled by the issue of administrative instructions. However, in the present case, the attention of the authorities has been invited only to the decision of the jurisdictional court. The view taken by a Bench of this Court is binding on every Tribunal functioning within the State. Thus, it cannot be said that merely by bringing the decision to the notice of the authorities, the State Government has cabined, controlled or confined their discretion.

(43) No other point was raised.

(44) In view of the above, we hold that :—

(i) The purchase of paddy by the petitioners in these cases is not exempt from the levy of tax. The case does not fall within the parameters of Sections 5 of the Central Act and 12 of the State Act.

(ii) The petitioners have an effective alternative remedy under the provisions of the Haryana General Sales Tax Act in so far as the challenge to the orders of assessment etc. is concerned. They are relegated to the remedy under the statute.

(iii) The instructions issued by the authority vide letter, dated 29th November, 2000, suffer from no infirmity of law so as to call for any interference by this court.

(45) The writ petitions are accordingly dismissed subject to the condition that the petitioners will be entitled to file appeal against the order of assessment. In the circumstances of these cases, we make no order as to costs.

R.N.R.

Before S. S. Nijjar, J

H.M.T. LTD.—*Petitioner*

versus

CHANDIGARH ADMINISTRATION AND OTHERS—*Respondents*

C.W.P. NO. 6809 OF 2000

8th November, 2001

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Ss. 2(a) and 10(1)—Territorial jurisdiction—Industrial dispute—Reference—Dismissal from service—Workman last employed at Mumbai—Order of dismissal though passed by the Head Office at Bangalore but served at Chandigarh—Chandigarh Administration making a reference of the dispute under section 10(1)(c)—Challenge to the territorial jurisdiction—High Court well within its jurisdiction