



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

(1) WRIT APPEAL No.254 of 2024

GNRC Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at GNRC Complex, Dispur, Guwahati – 781006, represented by Mr. Madhurjya Borah, one of the Directors of the Appellant Company.

.....Appellant

-Versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Commissioner, Central Goods & Service Tax, Guwahati, Central GST Hqrs., Guwahati, GST Bhawan, Kedar Road, Mackhowa, Guwahati – 781001.
3. The Assistant Commissioner, GST & Central Excise, Guwahati Division – II, 2nd Floor, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati – 781001.
4. The Superintendent, Central Goods & Service Tax Range – II D, 2nd Floor, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati – 781001.

5. GST Council, 5th Floor, Tower – II, Jeevan Bharati Building, Janpath Road, Connaught Place, New Delhi – 110001.

.....Respondents

(2) WRIT APPEAL NO.255 OF 2024

GNRC Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at GNRC Complex, Dispur, Guwahati – 781006, represented by Mr. Madhurjya Borah, one of the Directors of the Appellant Company.

.....Appellant

-Versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.

2. The Commissioner, Central Goods & Service Tax, Guwahati, Central GST Hqrs., Guwahati, GST Bhawan, Kedar Road, Mackhowa, Guwahati – 781001.

3. The Assistant Commissioner, GST & Central Excise, Guwahati Division – II, 2nd Floor, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati – 781001.

4. The Superintendent, Central Goods & Service Tax Range – II D, 2nd Floor, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati – 781001.

5. GST Council, 5th Floor, Tower – II, Jeevan Bharati Building, Janpath Road, Connaught Place, New Delhi – 110001.

.....Respondents

(3) WRIT APPEAL NO.256 OF 2024

GNRC Limited, a Company incorporated under the provisions of the Companies Act,

1956, having its Registered Office at GNRC Complex, Dispur, Guwahati – 781006, represented by Mr. Madhurjya Borah, one of the Directors of the Appellant Company.

.....Appellant

-Versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.

2. The Commissioner, Central Goods & Service Tax, Guwahati, Central GST Hqrs., Guwahati, GST Bhawan, Kedar Road, Mackhowa, Guwahati – 781001.

3. The Assistant Commissioner, GST & Central Excise, Guwahati Division – II, 2nd Floor, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati – 781001.

4. The Superintendent, Central Goods & Service Tax Range – II D, 2nd Floor, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati – 781001.

5. GST Council, 5th Floor, Tower – II, Jeevan Bharati Building, Janpath Road, Connaught Place, New Delhi – 110001.

.....Respondents

(4) WRIT APPEAL NO.257 OF 2024

GNRC Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at GNRC Complex, Dispur, Guwahati – 781006, represented by Mr. Madhurjya Borah, one of the Directors of the Appellant Company.

.....Appellant

-Versus-

1. The Union of India, represented by the Secretary to the Government of India,

Ministry of Finance, Department of Revenue, New Delhi.

2. The Commissioner, Central Goods & Service Tax, Guwahati, Central GST Hqrs., Guwahati, GST Bhawan, Kedar Road, Mackhowa, Guwahati – 781001.

3. The Assistant Commissioner, GST & Central Excise, Guwahati Division – II, 2nd Floor, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati – 781001.

4. The Superintendent, Central Goods & Service Tax Range – II D, 2nd Floor, GST Bhawan, Kedar Road, Fancy Bazar, Guwahati – 781001.

5. GST Council, 5th Floor, Tower – II, Jeevan Bharati Building, Janpath Road, Connaught Place, New Delhi – 110001.

.....Respondents

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM**

For the Appellants : Dr. A. Saraf, Senior Advocate, assisted by Mr. P.K. Bora and Mr. B. Sarma, Advocates.

For the Respondents : Mr. S.C. Keyal, Standing Counsel, Central Goods & Service Tax.

Date of Hearing : 07.08.2024.

Date of Judgment : 07.08.2024.

JUDGMENT & ORDER (ORAL)

(Vijay Bishnoi, CJ)

Heard Dr. A. Saraf, learned senior counsel, assisted by Mr. P.K. Bora and Mr. B. Sarma, learned counsel for the

appellants. Also heard Mr. S.C. Keyal, learned Standing Counsel, Central Goods & Service Tax, appearing for all the respondents.

2. These 4(four) writ appeals have been preferred by the petitioner Company (appellants herein) being aggrieved with the judgment & order dated 19.06.2024 passed by the learned Single Judge in WP(C) No.5398/2021, WP(C) No.5358/2022, WP(C) No.7336/2021 and WP(C) No.780/2022, whereby the learned Single Judge has dismissed the above referred writ petitions with liberty to the petitioners to approach the Appellate Authority with a further direction that the period spent in this Court shall not be counted for calculation of the prescribed period of time.

3. The brief facts of the case are that the appellant Company is operating a Hospital and is providing treatment to the patients for various illness and ailments. In other words, the Hospital owned and operated by the appellant Company is offering healthcare services.

The case set up by the appellant Company before the writ Court is this that the appellant Company do not charge any GST from the in-house-patients and the tax paid on such internal transfer to the in-house-patients Department was not liable to be paid but on account of mistake, the same was paid in excess due to ignorance/ lack of clarity of provisions of law. It is further contended that on seeking legal advice, the appellant Company came to know that the services provided by its Hospital to the in-house-patients were a composite supply of health services and was exempted from

the payment of GST. At this stage, the appellant Company filed applications for refund of the said taxes paid by it under Section 54 of the CGST Act/ SGST Act read with Rule 89 of the CGST Rules.

The Department, after receipt of the refund applications filed by the appellant Company, issued a deficiency memo to the appellant Company seeking further documents in respect of certain period and as per the appellant Company, the said documents were furnished through e-mail and whatever the deficiencies were pointed out were also cured.

4. Thereafter, the respondents issued show cause notices to the appellant Company directing it to show cause as to why the refund claim submitted by it should not be rejected on the ground that the exemption was given only for services provided (healthcare services) and not for goods and other items supplied. In the show cause notices, it was also mentioned that the taxes paid by the appellant Company for supplying the medicines, consumable and other items to their in-house-patients by the tax payer during the relevant period as per law and there was no excess payment of tax. Some other reasons have also been mentioned in the show cause notices, which have been duly taken note of by the learned Single Judge.

5. As per the appellant Company, after receiving the show cause notices, 2(two) weeks' further time were sought for by it for giving reply to the said show cause notices. However, the said time was not allowed and the orders

rejecting the claim of refund of taxes of the appellant Company has been issued on different dates stating that their case do not fall under Serial No.74(a) of the Notification No.12/2017 Central Tax (Rate) dated 28.06.2017.

6. In the writ petitions, the appellant Company has challenged the show cause notices issued by the respondent Department and the orders of rejecting their refund claims, details of which have been given by the learned Single Judge in Paragraph 3 of the impugned judgment & order.

7. The learned Single Judge has dismissed the above mentioned writ petitions considering the objection raised on behalf of the counsel for the respondents regarding the maintainability of the writ petitions on the ground of availability of an efficacious alternate remedy of appeal under Section 107 of the Central Goods & Services Tax Act, 2017 (hereinafter to be referred as "CGST Act, 2017"). The learned Single Judge has refused to exercise discretionary jurisdiction under Article 226 of the Constitution of India while observing that the impugned orders passed by the Assistant Commissioner, GST & Central Excise, Guwahati, whereby the refund claims of the appellant Company has been rejected, can be challenged by way of filing an appeal under Section 107 of the CGST Act, 2017.

The learned Single Judge, while taking into consideration the rival stands of the appellant Company as well as the respondents, has observed that there are some disputed questions of fact and such questions can be resolved efficaciously by the Appellate Authority and as such, the

learned Single Judge has declined to exercise the writ jurisdiction, more particularly, to issue a writ of certiorari for setting aside and quashing the impugned show cause notices and the impugned orders.

8. Assailing the impugned judgment, Dr. A. Saraf, learned senior counsel appearing for the appellant Company has vehemently submitted that the learned Single Judge has erred in dismissing the writ petitions on the ground of availability of alternate remedy of filing an appeal under Section 107 of the CGST Act, 2017.

It is contended that the learned Single Judge has also erred in observing that there are certain disputed questions of fact, whereas it is abundantly clear from the pleadings of the parties that no disputed questions of fact is involved in the writ petitions filed by the appellant Company. It is further submitted by the learned senior counsel that the questions raised by the appellant Company are purely questions of law and in such circumstances, the learned Single Judge ought to have entertained the writ petitions and decide the same on merits.

It is contended by Dr. Saraf, learned senior counsel that the Hon'ble Supreme Court has also observed in various pronouncements that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of alternative remedy being available. In support of the above contention, the learned senior counsel for the appellants has

placed reliance on a decision of the Hon'ble Supreme Court rendered in ***Godrej Sara Lee Limited -Vs- Excise and Taxation Officer-cum-Assessing Authority & Ors.***, reported in ***(2023) 109 GSTR 402 (SC)***.

It is, therefore, prayed that the impugned judgment & order passed by the learned Single Judge may kindly be set aside and the matters may be remanded to the learned Single Judge for deciding the writ petitions on merits.

9. Per contra, Mr. S.C. Keyal, learned standing counsel, Central Goods & Service Tax appearing for the respondents has vehemently opposed the writ petitions and has argued that the learned Single Judge has not committed any illegality in dismissing the writ petitions filed by the appellant Company on the ground of availability of alternate remedy. It is contended that the appellant Company has essentially filed the writ petitions being aggrieved with the decision of the Assistant Commissioner, GST & Central Excise, Guwahati, whereby the claims of the appellant Company for refund of taxes has been rejected. It is argued that under the CGST Act, 2017, complete mechanism is provided for redressal of the grievances of a person aggrieved by the action of the authorities and in such circumstances, the writ petitions filed by the appellant Company are not liable to be entertained.

It is, therefore, contended by Mr. Keyal that the learned Single Judge has not committed any illegality in dismissing the writ petitions by the impugned judgment.

In support of the above contention, Mr. Keyal has placed reliance on the decision of the Hon'ble Apex Court

rendered in ***PHR Invent Educational Society -Vs- UCO Bank & Ors.***, reported in ***2024 0 Supreme (SC) 333***.

10. We have heard the learned counsel appearing for the parties, perused the impugned judgment and the material available on record.

11. The case set up by the appellant Company before the learned Single Judge is that they have paid taxes in excess inadvertently due to ignorance and lack of clarity of the provisions of law. The refund claims filed by the appellant Company before the respondents were rejected by the Assistant Commissioner, GST & Central Excise, Guwahati by passing the orders on different dates.

12. What could be gathered from the pleadings is that the appellant Company had challenged the said show cause notices as well as the orders, whereby the refund claims had been rejected. We are of the view that after issuance of the show cause notices when the final order is passed by the authority concerned, essentially the writ petitions filed by the appellant Company are against the order, whereby their refund claim applications were dismissed.

13. The learned Single Judge has opined that against the rejection of the refund claims, the appellant Company has an alternate remedy to file an appeal under Section 107 of the CGST Act, 2017. Even if it is assumed that the writ petitions filed by the appellant Company do not involve any disputed question of fact and purely questions of law have been raised, then also the question arises, whether the learned Single

Judge has committed any illegality in refusing to exercise discretionary jurisdiction under Article 226 of the Constitution of India.

14. It is true that the Hon'ble Supreme Court in various pronouncements and in **Godrej Sara Lee Limited** (supra) has observed that where the controversy is purely a legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of alternative remedy being available. However, at the same time, the Hon'ble Supreme Court has also laid down that where the statute under which the action complained of contains a complete mechanism for redressal of grievances of a person complaining, a writ petition should not be entertained. Recently, a 3(three) Judges Bench of the Hon'ble Supreme Court in **PHR Invent Educational Society** (supra) has held as under:-

"14. The law with regard to entertaining a petition under Article 226 of the Constitution in case of availability of alternative remedy is well settled. In the case of Satyawati Tondon (supra), this Court observed thus:

'43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive

procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. *While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.*

45. *It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.'*

15. *It could thus be seen that, this Court has clearly held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. It has been held that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. The Court clearly observed that, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. It has been held that, though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still the Courts cannot be oblivious of the rules of self-imposed restraint evolved by this Court. The Court further held that though the rule of exhaustion of*

alternative remedy is a rule of discretion and not one of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution.

16. *The view taken by this Court has been followed in the case of Agarwal Tracom Private Limited v. Punjab National Bank and Others, (2018) 1 SCC 626 : 2017 INSC 1146.*

17. *In the case of Authorized Officer, State Bank of Travancore and Another v. Mathew K.C., (2018) 3 SCC 85 : 2018 INSC 71, this Court was considering an appeal against an interim order passed by the High Court in a writ petition under Article 226 of the Constitution staying further proceedings at the stage of Section 13(4) of the SARFAESI Act. After considering various judgments rendered by this Court, the Court observed thus:*

‘16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.’

18. *The same position was again reiterated by this Court in the case of Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir and Others, (2022) 5 SCC 345 : 2022 INSC 44.*

19. *Again, in the case of Varimadugu OBI Reddy v. B. Sreenivasulu and Others, (2023) 2 SCC 168 : 2022 INSC 1205, after referring to earlier judgments, this Court observed thus:*

‘34. The order of the Tribunal dated 1-8-2019 was an appealable order under Section 18 of the SARFAESI Act, 2002 and in the ordinary course of business, the borrowers/person aggrieved was supposed to avail the statutory remedy of appeal which the law provides under Section 18 of the SARFAESI Act, 2002. In the absence of efficacious alternative remedy being availed, there was no reasonable justification tendered by the respondent borrowers in approaching the High Court and filing writ application assailing order of the Tribunal dated 1-8-2019 under its jurisdiction under

Article 226 of the Constitution without exhausting the statutory right of appeal available at its command.'

20. It could thus be seen that this Court has strongly deprecated the practice of entertaining writ petitions in such matters.

21. Recently, in the case of Celir LLP (*supra*), after surveying various judgments of this Court, the Court observed thus:

'101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260], it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act.'

22. It can thus be seen that it is more than a settled legal position of law that in such matters, the High Court should not entertain a petition under Article 226 of the Constitution particularly when an alternative statutory remedy is available.

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28. Insofar as the contention of the Borrower and its reliance on the judgment of this Court in the case of Mohammad Nooh (*supra*) is concerned, no doubt that non-exercise of jurisdiction under Article 226 of the Constitution on the ground of availability of an alternative remedy is a rule of selfrestraint. There cannot be any doubt with that proposition. In this respect, it will be relevant to refer to the following observations of this Court in the case of Commissioner of Income Tax and Others v. Chhabil Dass Agarwal, (2014) 1 SCC 603:

'15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles

of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.'

29. *It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.

30. *It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance."*

15. In the present cases, it is not the case of the appellant Company that the authority has no jurisdiction to pass the impugned orders. It is also not the case of the appellant Company that the CGST Act, 2017 do not contain a comprehensive mechanism for redressal of its grievances. In

such circumstances, we are of the unhesitant opinion that the discretion exercised by the learned Single Judge in refusing to entertain the writ petitions on the ground of availability of efficacious alternate remedy is not liable to be interfered with and, therefore, the present writ appeals are dismissed.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant