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HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 32 of 2016

- M/s Sapna Steels Through Its Authorized Signatory - Shri Jai Prakash Agarwal, S/o Lt. M.R. Agrawal, Age 52 Years, Plot No. 314 & 315, Urla Industrial Area, Raipur, (Chhattisgarh)

---- Petitioner

Versus

- The Commissioner, Central Excise and Customs, Central Excise Building, Tikrapara, Raipur, (Chhattisgarh)

---- Respondent

For Petitioner	Shri R. K. Mishra, Advocate
For Respondent	Shri Vinay Pandey, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

15/12/2016

1. Petitioner is aggrieved by the assessment order passed by the Commissioner, Central Excise on 19.01.2016.

2. It is argued by the learned counsel for the petitioner that in the case at hand, the Department had allowed the petitioner to cross-examine Shri Pankaj Agrawal, Director of Pankaj Ispat, however, the assessment order has been passed even without his cross examination by the petitioner, therefore, the present petition is different from those petitions, wherein this Court has relegated the petitioner to exhaust the alternative remedy.

3. Learned counsel for the respondent would submit that once an order has been passed by the Assessment Officer against which

an appeal lies under Section 35B of the Central Excise Act, 1944 (henceforth 'the Act, 1944'), the petitioner may prefer the appeal and raise the above stated grounds also in the appeal.

4. Admittedly, the petitioner has alternative remedy of preferring an appeal before the Central Excise and Service Tax Appellate Tribunal under Section 35B of the Act, 1944.

5. Learned counsel for the respondent would place before this Court the order passed in the matter of **Raghupati Ispat House No.204 and another vs. Union of India and another connected matter** passed in **WPT No.79/2016** dismissing such petitions on the ground of availability of alternative remedy and the said order has been affirmed by the Division Bench in **Writ Appeal No.523/2016** (**Raghunath Rolling Mills House No.204 and another vs. Union of India)**, decided on 07.12.2016.

6. In view of the order passed in the above referred writ petition and writ appeal, the present writ petition is also dismissed with liberty to the petitioner to exhaust the alternative remedy under Section 35B of the Act, 1944. It is also observed that since the petitioner has preferred this petition on 24.02.2016 and since then it remained pending, if an appeal in terms of Section 35B is filed within 30 days from today, no argument on limitation shall be raised and the appeal shall be entertained on merits.

7. The writ petition is dismissed with the aforesaid liberty.

Sd/-

JUDGE
PRASHANT KUMAR MISHRA

Nirala