*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**
AND
HON'BLE SMT. JUSTICE T.RAJANI

+ <u>Writ Petition Nos.5274 and 5448 of 2017</u>

% 22-04-2017

\# M/s. AMR India Limited, Saikrupa, D.No.8-3-833,
Flat No.37 & 38, Phase-I, Kamalapuri Colony,
Hyderabad, represented by its authorized signatory,
Mr. T.V.A.L.N.V.D. Srinivasa Rao

… Petitioner

Vs.

$ 1. The Union of India, represented by its Secretary,
Ministry of Finance, Department of Revenue,
Customs, Central Excise and Service Tax,
New Delhi

2. The Commissioner, Office of Principal Commissioner
Of Service Tax, Service Tax Commissionerate,
11-5-423/1/A, Sitaram Prasad Towers, Red Hills,
Hyderabad

… Respondents

! Counsel for the Petitioner: Mr. P. Balaji Varma,

Counsel for Respondents : Sundari R. Pisupati,
Standing counsel for the Department

< Gist:

> Head Note:

? Cases referred:

1) (2001) 9 SCC 275
2) (1998) 8 SCC 1
3) (1997) 5 SCC 536
4) (1988) 2 SCC 602

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Mrs. Justice T. RAJANI

<u>Writ Petition No.11466 of 2017</u>

Between:

M/s. AMR India Limited, Saikrupa, D.No.8-3-833,
Flat No.37 & 38, Phase-I, Kamalapuri Colony,
Hyderabad, represented by its authorized signatory,
Mr. T.V.A.L.N.V.D. Srinivasa Rao

… Petitioner

Vs.

1. The Union of India, represented by its Secretary,
Ministry of Finance, Department of Revenue,
Customs, Central Excise and Service Tax,
New Delhi

2. The Commissioner, Office of Principal Commissioner
Of Service Tax, Service Tax Commissionerate,
11-5-423/1/A, Sitaram Prasad Towers, Red Hills,
Hyderabad

…. Respondents

For Petitioner : Mr. P. Balaji Varma,

For Respondents : Mr. Sundari R. Pisupati,
Standing counsel for the Department

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE MRS. JUSTICE T. RAJANI

Writ Petition No.11466 of 2017

ORDER: *(V. Ramasubramanian, J)*

The petitioner has come up with the above writ petition, challenging an Order-in-Original passed by the 2nd respondent.

2. Heard Mr. P. Balaji Varma, learned counsel for the petitioner and Mrs. Sundari R. Pisupati, learned standing counsel for the respondents.

3. Obviously, the petitioner has an alternative remedy of appeal to Customs, Excise and Service Tax Appellate Tribunal (CESTAT) as against the order impugned in the writ petition. But, the petitioner seeks to bypass the alternative remedy on the ground that the impugned order contains mistakes that a quasi-judicial order cannot afford to contain and that since the mistakes are so palpably present, it does not require an Appellate Authority to set it aside.

4. We have carefully considered the above submissions. When the statute provides an alternative remedy of appeal, irrespective of whether the learned counsel for the petitioner admits the existence of such a remedy or not, no assessee can bypass such an alternative remedy except under two contingencies, namely a) the violation of principles of natural justice; and b) the lack of jurisdiction on the part of the Authority, which passed the order. The case on hand does not fall under any one of these two categories.

By a curious reasoning, a third category cannot be created for bypassing the alternative remedy of appeal.

5. In brief, the grievance of the petitioner as against the impugned order, is: 1) that there were repetitions in the impugned order with regard to the availment of Cenvat credit; 2) that there was escalation of the demand on account of double entries; 3) that the original authority ignored the availability of invoices; and 4) that the recovery was beyond the period of limitation.

6. A careful look at the order of the Original Authority would show that these issues were raised by the petitioner. It is not as though the 2nd respondent simply recorded the submissions of the petitioner and jumped into a conclusion that he did without dealing with these issues. The contention of the learned counsel for the petitioner is that instead of meeting these points on the basis of facts, the 2nd respondent chose to simply deny them without any basis and that the same tantamounted either to non-application of mind or to non-consideration of the objections in a manner prescribed by law.

7. Let us assume for a minute that the objections were not dealt with, but simply rejected. The cases of this nature can come under different types. The first type of such cases may be those where the objections are not at all dealt with. The second type of cases are those where the objections are very shabbily dealt with. The third type of cases are those where the objections are dealt with, on valid or invalid grounds. Except in cases falling under the

first category, we do not think that we would allow the assessees to bypass the alternative remedies.

8. Relying upon the decisions of the Supreme Court in 1) **J.M. Baxi & Co, Gujarat v. Commissioner of Customs, New Kandla and another**[1]; 2) **Whrilpool Corporation v. Registrar of Trade Marks, Mumbai**[2]; 3) **Mafatlal Industries Ltd., v. Union of India**[3] and 4) **A.R. Antulay v. R.S. Nayak and another**[4], it is contended by the learned counsel for the petitioner that when a levy was obviously beyond the statute and beyond Article 265 of the Constitution, an assessee cannot be made to avail the remedies provided by the statute and that in cases of this nature where the levy was not in accordance with the statute, the assessee cannot be expected to avail the remedies provided under the statute.

9. We have considered the above submissions. At the out set, the decision of the Supreme Court in **J.M. Baxi & Co, Gujarat v. Commissioner of Customs** (1 supra), as indicated by the Supreme Court in Paragraph 2 of its order, arouse out of special facts of the case. Therefore, we have to look into the existence of any special facts in the case for invoking the decision in **J.M. Baxi & Co, Gujarat v. Commissioner of Customs**.

10. The decision in **Whrilpool Corporation v. Registrar of Trade Marks, Mumbai** (2 supra) arose out of the order of the Registrar of Trade Marks. A case arising under a taxing statute has

[1] (2001) 9 SCC 275
[2] (1998) 8 SCC 1
[3] (1997) 5 SCC 536
[4] (1988) 2 SCC 602

a small distinction from cases where inter party disputes are adjudicated by the quasi judicial authorities like Registrar of Trade Marks or the Intellectual Property Appellate Board. Therefore, the ratio laid down in **Whrilpool Corporation v. Registrar of Trade Marks, Mumbai** cannot be invoked in a case of this nature.

11. In **Mafatlal Industries Ltd., v. Union of India** (3 supra), the Supreme Court nevertheless pointed out that the jurisdiction of the Civil Court or the Writ Court under Article 226 of the Constitution does not stand ousted in certain circumstances. What was laid down in **Mafatlal Industries Ltd.,** was only a reiteration of what was said by the Constitution Bench in **Dhulabhai v. State of M.P.** (AIR 1969 SC 78). The said decision is not on the point as to the circumstances where the alternative remedy can be allowed to be bypassed.

12. The decision in **A.R. Antulay v. R.S. Nayak and another** (4 supra) arose out of the special circumstances. In the first round of litigation in **A.R. Antulay**, the Supreme Court directed the High Court itself to prosecute the appellant. After finding that there is no prescription in the Code of Criminal Procedure for the High Court to be the Court of first instance for prosecuting an accused under the Prevention of Corruption Act, the Supreme Court re-visited its order in **A.R. Antulay**.

13. Therefore, we are of the considered view that the decisions relied upon by the learned counsel for the petitioner would not apply to the case on hand. In respect of each of the objections on the basis of which the petitioner has now come up with the writ

petition, there is a reference in the impugned order. As a matter of fact, the learned counsel for the petitioner invited us to pronounce our opinion even on the merits. But we shall not do that, as it may prejudice even the petitioner. Therefore, we dismiss the writ petition with liberty to the petitioner to approach the Appellate Authority for redressal.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

T. RAJANI, J

Date: 22-08-2017

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