THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.Nos.14426, 29111, 29870, 29879 and 29876 of 2017, 36403 and 32734 of 2016

Date: 27.11.2017

Between:
M/s.Cholayil Pvt. Limited,
rep. by N.Mathivanam, Vice President,
Finance and Accounts, No.1/106,
Kalahasti Road, Tada mandal,
Nellore district,
Andhra Pradesh - 524401 … Petitioner

And

Assistant Commissioner,
O/o.Assistant Commissioner of
Central Excise, Nellore division,
PB.No.14, S.M.Towers,
Dargamitta, Nellore-524003 … Respondent

Counsel for the Petitioner : Mr. Joseph Prabhakar for Mr.A.K.Jaiswal

Counsel for the Respondents : Mr.B.Narasimha Sarma Senior Standing Counsel for Central Excise

The Court made the following:

Order : (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The petitioner is common in all these writ petitions. W.P.Nos.14426 of 2017, 36403 and 32734 of 2016, are filed by the petitioner, an assessee under the Income Tax Act, 1961 (for short 'the Act'), feeling aggrieved by rejection of refund claims made by it for different assessment years. W.P.Nos.29111, 29870, 29879 and 29876 of 2017, are filed by the petitioner against the orders, cancelling the refund orders.

2. At the hearing, the learned counsel for the petitioner has not disputed the fact that against the orders impugned in these writ petitions, the petitioner has a remedy of appeal under Section 246A of the Act, and a further appeal to the Income Tax Appellate Tribunal under Section 253 of the Act. The learned counsel however submitted that the impugned orders are ex-facie illegal and, therefore, the petitioner has filed these writ petitions, by-passing the alternative remedies. In our opinion, the rule of alternative remedy, though not a rule of law, but a rule of convenience, a self imposed rule by the superior Courts, has only a few exceptions, namely; where the petitioner complains of infringement of any of his fundamental rights, where there is violation of principles of natural justice or where the orders or proceedings impugned, are wholly without jurisdiction or the vires of the Act is challenged. (**See** RAJ KUMAR SHIVHARE VS. ASSISTANT DIRECTOR, DIRECTORATE OF

ENFORCEMENT AND ANOTHER[1], HARBANSLAL SAHNIA VS. INDIAN OIL CORPN. LTD[2] and STATE OF H.P. AND OTHERS VS. GUJARAT AMBUJA CEMENT LTD. AND ANOTHER[3])

3. The pleadings in these writ petitions do not show that the impugned orders suffer from any of the above vices. Even if the orders passed by the respondent is ex facie illegal, such orders can be set aside in appeals and, therefore, the petitioner cannot be permitted to avail the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, on this ground. If the petitioner does not succeed before the appellate fora, which are manned by experienced judicial and administrative members, he can avail the remedy of further appeal before this Court under Section 260A of the Act.

4. In this view of the matter, we are not inclined to entertain these writ petitions at this stage and the writ petitions are accordingly dismissed, without expressing any opinion on the merits of the case, however, with liberty to the petitioner to avail the remedies of appeal. Since the petitioner did not file the appeals before the 1st appellate authority in view of its pursuing the remedy of writ petitions, it is permitted to file such appeals within 3 weeks from the date of receipt

[1] (2010) 4 SCC 772
[2] (2003) 2 SCC 107
[3] (2005) 6 SCC 499

of this order and if appeals are filed within the said time, the 1st appellate authority shall entertain and dispose of the same on merits.

5. As a sequel to the dismissal of the writ petitions, W.P.M.P.Nos.17880, 36233, 37211, 37227 and 37224 of 2017, 44850 and 40512 of 2016 filed by the petitioner for interim relief, are dismissed as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 27th November, 2017

msb