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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 77 of 2013

Ramavatar Mishra S/o Shri Ganga Prasad Mishra, Aged About 72 Years, R/o Chandalpur Post Ramhepur, P.S. Tehsil Bodla, District Kabirdham, Chhattisgarh.

---- Petitioner

Versus

1. Union of India, Ministry of Finance, Department of Revenue, through Additional/Upper Commissioner, Customs And Central Excise, Customs And Central Excise, Bhawan, Dhamtri Road, Raipur, Chhattisgarh

2. Superintendent, Customs, Central Excise And Service Tax, Range Rajnandgaon, M-19, Anupam Nagar, Rajnandgaon, Chhattisgarh

3. Bhoramdeo Sahkari Shakkar Utpadat Karkhana Malryadit, Kawardha, Distt Kabirdham, Through Its Managing Directior, District : Kawardha (Kabirdham), Chhattisgarh

---- Respondents

And

WPT No. 75 of 2013

1. Gandhi Shramik Sahkari Samiti S/o Maryadit, Having Its Reg. Office At Ramhepur, Kawardha, District Kabirdhar C.G Through Its President Bhuneshwar Kosle, S/o Sauram, aged about 55 years, R/o Post Ramhepur, Distt. And P.S. Kabirdham,Chhattisgarh

---- Petitioner

Versus

1. Union of India, Ministry of Finance, Department of Revenue, through Additional/Upper Commissioner, Customs And Central Excise, Customs And Central Excise, Bhawan, Dhamtri Road, Raipur, Chhattisgarh

2. Superintendent, Customs, Central Excise And Service Tax, Range Rajnandgaon, M-19, Anupam Nagar, Rajnandgaon, Chhattisgarh

3. Bhoramdeo Sahkari Shakkar Utpadat Karkhana Malryadit, Kawardha, Distt Kabirdham, Through Its Managing Directior, District : Kawardha (Kabirdham), Chhattisgarh.

---- Respondents

For Petitioners	:	Mr. Shailendra Sharma, Advocate.
For Respondents	:	Mr. Vinay Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/04/18

1. These instant writ petitions have been filed by the petitioners being aggrieved against the order passed by respondent No. 1 under Section 73 read with Section 75, 76, 77 and 78 of the Finance Act, 1994 imposing penalty upon the petitioners.

2. Learned counsel appearing for the petitioners would submit that the impugned order passed is unsustainable and bad in law and is liable to be set aside.

3. Learned counsel appearing for the respondents would submit that petitioners have an alternative remedy to file an appeal under Section 35(B) of the Central Excise Act, 1944 and therefore, the writ petition is not maintainable.

4. I have heard learned counsel for the parties and perused the impugned order and gone through the records with utmost circumspection.

5. In the matter of **Hindustan Coca Cola Beverage Private Limited v. Union of India and others**[1] the Supreme Court has held with regard to alternative remedy under Section 35(B) of the Central Excise Act, 1944 as under :-

1 (2014) 15 SCC 44

“14. Be it stated, there is no cavil over the fact that an appeal lies under Section 35 of the Central Excise Act, 1944 to the Commissioner (Appeals) who can address both the issues relating to the facts and law keeping in view the applicability of the relevant notifications. It is borne out from the record that the appellant assessees had furnished a bank guarantee amounting to Rs. 2,20,18,124 for obtaining an order of stay. In our considered opinion it would not be appropriate to give an opportunity to the appellant to prefer statutory appeals and allow it to enjoy the benefit of stay of recovery on the basis of a bank guarantee. Therefore, we would direct the assessees to deposit Rs. 2.5 crores before the adjudicating authority within six weeks and after the said deposit is made and the receipt obtained, the appeal would be entertained within the said period. On the appeal being filed, the Commissioner (Appeals) shall deal with the matter on merits. The learned Attorney General very fairly stated that the Revenue would not raise the issue of limitation as the period spent before the High Court and this Court and the time granted for depositing of the amount would stand excluded for the purpose of preferring the appeal.

16. Considering the amount in question in various appeals it is directed that in case the bank guarantees furnished by the assessees have been encashed no deposit shall be made. If the bank guarantees have not yet been encashed, the amount as mentioned hereinabove plus rupees five lakhs shall be deposited within the stipulated time-frame of six weeks. As we have directed for deposition of the amount, it is directed that after deposit of the said amount, the bank guarantees furnished in favour of the jurisdictional Commissioner shall be returned to the appellant assessees.

17. In the result, the appeals stand allowed in part. The judgment and orders of the High Court in the writ petitions and writ appeals are set aside and the appellant assessees are

> directed to prefer appeals with the conditions precedent as imposed hereinabove. The appeals shall be disposed of within a period of three months from the date of its presentation after giving opportunity of hearing to the parties. Needless to clarify, we have not expressed any opinion whatsoever on the merits of the case. There will be no order as to costs."

6. In view of the aforesaid renunciation of the law, petitioners having alternative efficacious remedy of appeal before the appellate authority, this Court is not inclined to entertain this writ petition. Accordingly, it is dismissed. However, the petitioner is at liberty to prefer an appeal before the Appellate authority in accordance with law within 30 days from today that will be decided by the appellant authority expeditiously. No cost(s).

SD/-

(Sanjay K. Agrawal)
Judge

Priyanka