NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 1 of 2018

Harish Raisinghani C/o Shri Ashok Jotwani, House No.A-28, Mamta Niwas, Mekosabagh, Sindhi Colony, Post-Bejanbagh, Nagpur (Maharashtra)

---- Petitioner

Versus

Union Of India, through Principal Commissioner, Central GST, Central Excise & Customs, Central GST Bhawan, Dhamtari Road, Tikrapara, Raipur (CG) 492001

---- Respondent

For Petitioner	:	Mr. Vinay Kumar Jain, Advocate
For Respondent	:	Mr. Maneesh Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/04/2018

1. This writ petition is directed against the order dated 25.9.2017 passed by the Principal Commissioner, Central Excise GST and Central Excise, Raipur imposing demand and excise duty of ₹ 3,76,52,332/- (Rupees Three Crore Seventy Six Lakhs Fifty two thousand three hundred thirty two only) upon the petitioner.

2. Mr.Vinay Kumar Jain, learned counsel appearing for the petitioner would submit that the impugned order is unsustainable and bad in law and is without jurisdiction.

3. Mr. Maneesh Sharma, learned counsel appearing for the respondent would submit that the order is appellable under Section 35B(1)(a) of the Central Excise Act, 1944 and as such, alternative remedy being available,

the writ petition is not maintainable. He would further submit that in order to avoid the mandatory deposit, instead to prefer an appeal, this writ petition has been filed by the petitioner herein.

4. I have heard learned counsel for the parties, 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 :-

> “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.

1 (2014) 15 SCC 44

> 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.
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> 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 enunciation of law, the petitioner having alternative efficacious remedy of appeal before the appellate authority, he remained ex-parte before the Commissioner and has raised several question of fact, which can competently be decided by 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. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-