IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11898 OF 2016

Ajay Tanna s/o. Surendra K. Tanna ..Petitioner
versus
Union of India & Ors. ..Respondents

Mr. Balraj Kulkarni with Mr. Sachin K. i/b. PRS Legal for Petitioner.
Mr. M. Dwivedi with Mr. Sham Walve for Respondents.

CORAM: S. C. DHARMADHIKARI &
SMT. BHARATI HARISH DANGRE, JJ.

DATE : 5TH FEBRUARY, 2018

P. C. :

1] The petitioner claims to be an ex-director of one M/s. Suprapti Plastics Limited. He says that it is an export oriented unit holding a custom private bonded warehouse license. The concession in terms of exemption in customs and excise duty were obtained by this entity with reference to machinery / instruments by undertaking export obligations. However, this entity landed in financial difficulties and had to approach the Board of Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985. The company could not complete various job-works. A show cause notice was issued for imposing fine / penalty. There was a reply given by the company and the petitioner. An order of adjudication was passed on 12th March 2009 imposing penalty. That was upheld by the appellate authority on 29th April 2011.

2] On further appeal the matter was remanded by Customs, Excise & Service Tax Appellate Tribunal (CESTAT) on 9th December 2014. Thereafter on 19th November 2015 order of the adjudicating authority levying various penalties on the company and a personal penalty on the petitioner of Rs.1.90 crores has been passed. It is this order which has been challenged in this writ petition.

3] The prayers in the petition make interesting reading. They read as under:

> "A. Upon verifying the legality and/or propriety of the impugned order dated 19.11.2015, this Hon'ble Court be pleased to quash and set aside the impugned order;
>
> B. In the alternative, this Hon'ble Court be pleased to direct the respondent no. 3 to entertain appeal of the petitioner on merits without insisting for pre-deposit of 7.5% of the penalty amount levied in terms of the impugned order."

4] On perusal of such a petition, we informed the petitioner's Advocate that he has several remedies open to him to challenge this order which is styled as an order in original. He knows that appeal lies to the appellate authority which is the first appellate authority and in case that order is against him he can file a further appeal to the Tribunal. He approaches the writ court this time in writ jurisdiction directly without resorting to these remedies only because he wants a relief of not being asked or called upon to secure the revenue. He would have to secure the revenue in terms of the amended provisions and to the extent of 7.5%. He knows this and this is styled as a pre-deposit. To obviate and avoid complying with this condition of pre-deposit, he approaches this Court in

writ jurisdiction.

5] We do not think that such a writ should be entertained and at his instance we should permit him to avoid or bypass legal remedies which would be the only remedies to resolve disputed questions of fact. These remedies are alternate and equally efficacious and a reasonable condition of securing the revenue to the extent of 7.5% is neither onerous nor excessive. It is not arbitrary also. A reasonable condition can be imposed on the petitioner or parties like him and to balance rights and equities. That is done precisely by the legislature. That provision is not challenged nor its legality or validity is questioned in writ jurisdiction. Hence in writ jurisdiction we do not wish to entertain a party like the petitioner. The petition is an abuse of the process of this Court. It is dismissed.

(SMT. BHARATI H. DANGRE, J.) (S. C. DHARMADHIKARI, J.)

Chandka