IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 10558 OF 2017

M/s. Shree Siddhi Vinayak
Ispat Pvt. Ltd., .. Petitioner
v/s.
Union of India & Another .. Respondents.

WITH
WRIT PETITION NO. 11736 OF 2017

M/s. Shree Bhimeshwari Ispat Pvt. Ltd., .. Petitioner
v/s.
Union of India & Another .. Respondents.

WITH
WRIT PETITION NO.11737 OF 2017

M/s. Ambey Vaishno Steels
Pvt. Ltd., & Others .. Petitioners
v/s.
Union of India & Another .. Respondents.

Mr. V. M. Doiphode, for the Petitioners in all the Petitions.
Mr. Sham Walve with Ms. Maya Majumdar, for the Respondents in all the Petitions.

CORAM: M.S.SANKLECHA &
RIYAZ I.CHAGLA,JJ.
DATE : 25th SEPTEMBER, 2018.

P.C:-

All these Petitions under Article 226 of the Constitution of India, challenge a common order dated 31st March, 2017 passed by the Commissioner of Central Excise Act under the Central Excise Act, 1944 (the Act). The common impugned order dated 31st March, 2017 confirms demand for excise duty and also imposes penalties under the Act.

2 The grievance of the Petitioner to the common impugned order dated 31st March, 2017 is that it has been passed without giving an opportunity to the Petitioner to cross examine the person whose statement is being relied upon by the Revenue. Thus, it is submitted that this Court should exercise its writ jurisdiction and set aside the impugned order dated 31st March, 2017.

3 Mr. Walve, learned Counsel appearing for the Respondent-Revenue states that there is an efficacious alternative remedy available under the Act to challenge the impugned order before the Customs, Excise & Service Tax Appellate Tribunal. Our attention is invited to the order dated 25th April, 2018 passed by this Court in Writ Petition No.9986 of 2017 (Shree Bhimeshwari Ispat Ltd., v/s. Union of India) – where an identical challenge to an order passed by the Commissioner of Central Excise was not entertained by this Court on the ground that there is an efficacious alternative remedy available under the Act. It is submitted that the facts and appropriate law in this case are identical to the challenge in Shree Bhimeshwari Ispat Ltd., (supra). Thus, the Petitions should not be entertained.

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4 Mr. Doiphode, learned Counsel appearing for the Petitioner does not dispute the fact that the above order dated 25th April, 2017, in Shree Bhimeshwari Ispat Ltd., (supra) was rendered in circumstances identical to that existing in these Petitions. There is no distinction in facts of the two cases. However, it is his submission that in view of the decision of the Supreme Court in ***Commissioner of Income Tax v/s., Chhabil Dass***

Agarwal 2014 (1) SCC 603 which was not brought to the notice of the earlier Division Bench which passed the order dated 25th April, 2017 in Shree Bhimeshwari Ispat Ltd., (supra), this Court should exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India.

5 In support, Mr. Doiphode, invites our attention to para 19 of Chhabil Das Agarwal (supra), which reads as under:-

> *"19 – Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Tansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."*

6 The jurisdiction of the Courts while exercising power under Article 226 of the Constitution is plenary. However, the Court has developed a self imposed rule that, in case, where there is an alternate efficacious remedy available, this Court would not normally exercise its discretion to entertain a Petition under Article 226 of the Constitution of India. The exercise of discretion would depend upon the facts of the case before the Court and no universal rule can be laid down in that context.

Therefore, where the order is challenged is without jurisdiction (as opposed to an error within jurisdiction), or the process of decision making is such that it shocks the conscious of the Court and the interference on the above ground does not involve finding of fact and/or elaborate examination of evidence, then in the facts of the case, the Court may exercise its discretion to entertain the Petition. However, it needs to be emphasized that there can be no hard and fast rule in this matter. It is entirely for the Court to decide whether to exercise its discretion or not in the facts of the case before it.

7 We find that the impugned order dated 31st March, 2017 has considered and dealt with the issue of grant of cross examination to the Petitioner to come to the conclusion that in these facts, it need not be granted. Thus, if the Petitioner is aggrieved with regard to the manner in which the impugned order has refused to grant cross examination, that is an issue which could be appropriately agitated before the Appellate Authority i.e. the Tribunal. This for the reason that it would require factual determination of whether or not, in the facts and circumstance of the case, the cross examination as requested, ought to be given. Therefore, in the present facts, the impugned order is not an order without jurisdiction, if at all, at the highest, it could be an error within jurisdiction. Therefore, a proper subject of appeal, before the Tribunal. Therefore, the observations of the Hon'ble Supreme Court in Chhabil Das Agarwal (supra) in the present facts, do not support the Petitioners.

8 In the above view, we see no reason to exercise our extra ordinary jurisdiction to interfere with the impugned order dated 31st March, 2017 passed by the Commissioner of Central Excise. Petitioner

does has an effective alternative efficacious remedy available under the Act. In its appeal, it could urge all issues including non-granting of cross examination before the Appellate Authority. Thus, following the decision of this Court in Shree Bhimeshwari Ispat Ltd., (supra), admittedly on identical facts and law, we see no reason to entertain these Petitions.

9 In the above view, all these **Petitions** are **dismissed.**

(RIYAZ I. CHAGLA,J.) **(M.S.SANKLECHA,J.)**

Smita Rajnikant Joshi

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