IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.504 of 2018
and
CMP No.4732 of 2018

M/s. The State Trading Corporation of India Ltd.,
Having its registered office at
JawaharVyaparBhavan, Tolstoy Marg,
New Delhi - 110 001.
Having its branch office at
STC Trade Centre,
A-29, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032. .. Appellant/Petitioner

versus

1. The Commissioner of Customs,
Office of the Commissioner of Customs,
Chennai - II, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

2. M/s.HariSattar & Sons,
Ground Floor, New No.58, Old NO.81/1,
Acharappan Street, Chennai - 600 001.
.. Respondents/Respondents

Writ Appeal filed against the order dated 30.10.2017 in W.P.No.19308 of 2017.

Prayer in WP.No. 19308 of 2017: Writ Petition filed under Article 226 of the constitution of India praying for the issue a Writ of Certiorari mandamus, calling for the records pertaining to the impugned order in original No.54955/ 2017 dated 17.04.2017 passed by the 1st Respondent and quash the same as far as the petitioner is concerned.

For Appellant : Mr.V.Bhiman for Sampath Kumar
and Associates
For Respondents: Mr.Santhanaraman (for R1)
(R1) Central Govt. Sr. Standing Counsel.

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Mr.Santhanaraman, learned Central Government Senior Standing Counsel takes notice for the Commissioner of Customs, Office of the Commissioner of Customs, Chennai, the 1st respondent herein, takes notice.

2. Writ Appeal is directed against the order made in W.P.No.19308 of 2017 dated 30.10.2017, by which, the writ Court, while declining to entertain the writ petition, against the order-in-Original No.54955 of 2017 dated 17.04.2017, granted liberty to the appellant to file statutory appeal under Section 129 A(1) of the provisions of the Customs Act, 1962.

3. Brief facts leading to the writ appeal are that pursuant to a show cause notice dated 04.10.2013 issued by the Directorate of Revenue Intelligence, on the subject "Misuse of Tariff Rate Quota Scheme in the import of popcorn maize by M/s.Haji Sattar & Sons, Chennai", the adjudicating authority, vide order dated 17.04.2017, held as follows:

> "1. Imports made through Nhava-Sheva Port, Maharashtra,
> (i) I reject the duty exemption benefit of Sr.No.21 of the Notification No.21/2002-Customs dated 01.03.2002 claimed and extended at the time of assessment of said 05 consignments and order for recovery of Customs duty @ 50% along with applicable Education Cess and I confirm the total duty amounting to Rs.2,73,97, 613/- (Rupees Two Crores Seventy three lakhs ninety seven thousand six hundred and thirteen only) under Section 28(2) and 28(8) of the Customs Act, 1962 along with interest under Section 28AB / 28AA of the Customs Act, 1962, as applicable during the period of their of currency, jointly and severally on M/s.Haji Sattar & Sons, Chennai and M/s. State Trading Corporation of India Ltd., New Delhi.
> (ii) I hold that 2415 MT of popcorn maize valued at Rs.5,31,99,247/- imported vide aforesaid 14 Bills of Entry are liable to confiscation under Section 111 (d) and 111 (o) of the Customs Act, 1962. Since the goods are not physically available for confiscation, I refrain from imposing any fine.
> (iii) I impose a penalty of Rs.2,73,97,613/- and interest thereon (Rupees Two Crores Seventy Three Lakhs Ninety Seven Thousand Six Hundred and thirteen only and the interest thereon) under Section 114A of the Customs Act, 1962, jointly and severally on M/s.Haji Sattar & Sons and M/s.State Trading

Corporation of India Ltd.

(iv) I order for appropriation of Rs.21,36,594/- deposited with M/s.State Trading Corporation of India Ltd., during course of investigation towards the dues recoverable.

(v) I impose a penalty of Rs.40,00,000/- (Rupees Forty Lakhs only) on Shri Siraj Ashraf, Partner of M/s.Haji Sattar & Sons under Section 112 of the Customs Act, 1962.

(vi) I impose a penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only) on Shri Imtiyaz Hussein, Partner of M/s.Haji Sattar Habib & Sons under Section 112 of the Customs Act, 1962.

II. Imports made through Seaport-Import, Chennai.

i. I reject the duty exemption benefit of Sr.No.21 of the Notification No.21/2002-Customs dated 01.03.2002 claimed and extended at the time of assessment of aforesaid 09 consignments and order for recovery of Customs duty @ 50% along with applicable Education Cess and I confirm the total duty amounting to Rs.1,42,07,363/- (Rupees One Crore Forty Two Lakhs Seven Thousand Three Hundred Sixty Three only) under Section 28(2) and 28(8) of the Customs Act, 1962, along with interest under Section 28AB/28AA of the Customs Act, 1962, as applicable during the period of their currency, jointly and severally on M/s.Haji Sattar & Sons, Chennai and M/s.State Trading Corporation of India Ltd, New Delhi.

ii. I hold that 1150 MT of popcorn maize value at Rs.2,75,87,112/- imported vide aforesaid 09 Bills of Entry be liable to confiscation under Section 111 (d) and 111(o) of the Customs Act, 1962; Since the goods are not physically available for confiscation, I refrain from imposing any fine.

iii. I impose a penalty of Rs.1,42,07,363/- and interest thereon (Rupees One Crore Forty Two Lakhs Seven Thousand Three Hundred Sixty Three Only and interest thereon) under Section 114A of the Customs Act, 1962, jointly and severally on M/s.Haji Sattar & Sons, Chennai and M/s.State Trading Corporation of India Ltd.,

iv. I impose a penalty of Rs.40,00,000/- (Rupees Forty Lakhs only) on Shri Siraj Ashraf, Partner of M/s.Haji Sattar & Sons under Section 112 of the Customs Act, 1962.

v. I impose a penalty of Rs.20,00,000/- (Rupees Twenty Lakhs Only) on Shri Imtiyaz Hussein, Partner of M/s.Haji Sattar Habib & Sons under Section 112 of the Customs Act, 1962.

4. Being aggrieved M/s.State Trading Corporation of India Limited, having its registered office at Delhi, Branch office at Chennai, filed W.P.No.19308 of 2018, for a writ of certiorari to quash the order of the adjudicating authority dated 17.04.2017.

5. After considering the rival submissions, and by observing that writ Court would not go into disputed questions of fact, taking note of Section 129 A(1) of the Customs Act, 1962, which provides for an appeal as against an order in original and also the submission of the learned counsel for the appellant that even if an appeal has to be filed it would be out of time, writ Court in exercise of the powers under Article 226 of the Constitution of India, permitted the petitioner to file an appeal before CESTAT, Madras.

6. Though, by referring to the decision made in W.P.No.5120 of 2011 dated 31.03.2011, Mr.Bhiman, learned counsel made submissions to the effect that even in the said proceeding, State Trading Corporation of India, has not been fastened with any liability and therefore, impugned order before us, in W.P.No.19308 of 2017 dated 30.10.2017, requires interference, this Court is not inclined to accept the said contentions for reason that in W.P.No.5120 of 2011, prayer sought for by M/s.Haji Sattar & Sons, represented by its Partner Siraj Ashraj Sheriff, was to issue a writ of mandamus, directing the State Trading Corporation of India Limited, 1st respondent/ appellant herein, to retrieve the original licence in No.050001823, dated 26.04.2010 issued by the office of the Joint Director General of Foreign Trade, Ministry of Commerce, Government of India, New Delhi, from the office of the second respondent and effect clearance of the goods, viz., 3000 Mts of Maize (Corn), Imported under Tariff Rate Quota Scheme (TRQ Scheme) for the period April 2010 to 31st March, 2011, in terms of the agreement dated 7.10.2010 entered into between the appellant herein and the State Trading Corporation of India Limited, Chennai.

7. Further, perusal of the order made in W.P.No.5120 of 2011 dated 31.03.2011, shows that while issuing a direction to State Trading Corporation of India Limited, Chennai, 1st respondent therein, writ Court has granted permission to the Additional Director General, DRI, Mumbai, the 2nd respondent therein to complete the investigation under the Provisions of the Act and make necessary recommendations to the licensing authority, and thereafter, the licensing authority has to take appropriate action in the manner known to law.

8. Averments and decision rendered in W.P.No.5120 of 2011 dated 31.03.2011, relate to grant / retrieval of original licences. As stated supra, show cause notice dated 04.10.2013 has been issued for "Misuse of Tariff Rate Quota Scheme in the

import of popcorn maize by M/s.Haji Sattar & Sons, Chennai" and on adjudication, the Additional Director General, DRI, has held that the appellant herein is liable to pay penalty of Rs.2,73,97,613/- under Section 114A of the Customs Act, 1962, jointly and severally on M/s.Haji Sattar & Sons and M/s.State Trading Corporation of India Ltd., during the course of investigation towards dues recoverable.

9. As rightly observed by the writ Court, when there is an effective and alternative remedy under Section 129 A(1) of Customs Act, 1962, it would not be appropriate to entertain a writ petition, on the disputed questions of facts. On more than one occasion, the Hon'ble Supreme Court, as well as this court, held that, ordinarily, writ petitions should not be entertained when the statutes provide for an effective and alternative remedy, moreso, in revenue matters. Reference can be made to few decisions, in this regard.

(i) In Union of India v. T.R.Verma, AIR 1957 SC 882, the Hon'ble Supreme Court held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution, unless there are good grounds to do, otherwise.

(ii). In C.A.Ibrahim v. ITO, AIR 1961 SC 609, H.B.Gandhi v. M/s. Gopinath & sons, 1992 (Suppl) 2 SCC 312 and in Karnataka Chemical Industries v. Union of India, 1999 (113) E.L.T. 17(SC) = 2000 (10) SCC 13, the Hon'ble Supreme Court held that where there is a hierarchy of appeals provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

(iii). The general principles of law to be followed while entertaining a writ petition, when an alternative remedy is available, as per the decision of the Hon'ble Apex Court in U.P.State Spinning Co. Ltd. Vs. R.S.Pandey and Another (2005) 8 SCC 264, at para No.11 are as follows:

> "Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the

Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the high Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction."

(iv) In United Bank of India Vs. Satyawati Tondon and Others {(2010) 8 SCC 110}, the Hon'ble Apex Court, at paragraph Nos.43 to 45, held as follows:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they do not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the high Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue

to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision etc., and the particular legislation contains a detailed mechanism for redressal of his grievance."

(v). In Nivedita Sharma Vs. Cellular Operators Association of India and Others {(2011) 14 Supreme Court Cases 337}, the Honourable Apex Court held that,

"An alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge. The Court has recognised some exceptions to the rule of alternative remedy. However, 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 or grievance still holds the field."

(vi) The Hon'ble Apex Court, after considering a catena of cases, in Shauntlabai Derkar and Another Vs. Maroti Dewaji Wadaskar {(2014) 1 Supreme Court Cases 602}, at para Nos.15 to 18, held as follows:-

> "15. Thus, while it can be said that this Court has recognised 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 Thansingh Nathmal Case {Thansigh Nathmal Vs. Supt. of Taxes, AIR 1964 SC 1419}, Titaghur Paper Mills Case {Titaghur Paper Mills Co. Ltd Vs. State of Orissa (1983) 2 SCC 433} 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 crated by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.
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> 16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. Vs. State of Haryana (1985) 3 SCC 267, this Court has noticed that if an appeal is from "Caesar to Caesar's wife", the existence of alternative remedy would be a mirage and an

exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act, as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ Court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon.

18. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in Chhabil Dass Agarwal Vs. Union of India {W.P.(c) No.44 of 2009, decided on 5/10/2010}. We grant liberty to the respondent, if he so desires, to file an appropriate petition/appeal against the orders of reassessment passed under Section 148 of the Act within four weeks' time from today. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation. However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of Writ Petition (Civil) No.44 of 2009, in its judgment and order dated 5/10/2010."

(vii) After considering a plethora of judgments, in Union of India and Others Vs.Major General Shri Kant Sharma and Another {(2015) 6 SCC 773}, at para36, the Apex Court held as follows:-

"The aforesaid decisions rendered by this Court can be summarised as follows:-

(i). The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the

Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India (Refer: L.Chandrakumar Vs. Union of India (1997) 3 SCC 261 and S.N.Mukherjee Vs. Union of India (1990) 4 SCC 594.

(ii). The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act (Refer: Mafatlal Industries Ltd., Vs. Union of India (1997) 5 SC 536.

(iii). When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.

(iv). 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. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.)"

(viii) In Veerappa Pillai Vs. Raman & Raman Ltd {1952 SCR 583}, CCE Vs. Dunlop India Ltd {(1985) 1 SCC 260}, Ramendra Kishore Biswas Vs. State of Tripura {(1999) 1 SCC 472, Shivgonda Anna Patil Vs. State of Maharashtra {(1999) 3 SCC 5}, C.A.Abraham Vs. ITO {(1961) 2 SCR 765}, Titaghur Paper Mills Co Ltd., Vs. State of Orissa {(1983) 2 SCC 433}, H.B.Gandhi Vs. Gopi Nath & Sons {1992 Supp (2) SCC 312}, Whirlpool Corpn Vs. Registrar of Trade Marks {(1998) 8 SCC 1}, Tin Plate Co. of India Ltd., Vs. State of Bihar {(1998) 8 SCC 272}, Sheela Devi Vs. Jaspal Singh {(1999) 1 SCC 209} and Punjab National Bank Vs. O.C.Krishnan {(2001) 6 SCC 569}, the Court held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

10. In the light of the discussion and decisions considered, we find, no material illegality or irregularity in the impugned

order. Writ Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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1. The Commissioner of Customs,
Office of the Commissioner of Customs,
Chennai - II, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

+1cc to Mr.M.Santhanaraman, Advocate SR.No.20858

+1cc to Mr.V.Bhiman Advocate for
Mr.Sampath Kumar & Associates, Advocate SR.No.20673

W.A.No.504 of 2018
and
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