

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.686 of 2018

M/s.Raj Brothers Shipping Pvt. Ltd.,
1st Floor, 9/3A, Lotus Ramasamy Street,
Royapuram, Chennai - 600 013
by its Director Mr.M.Thirumala Thiagarajan .. Appellant

versus

The Commissioner of Customs
Chennai VII Commissionerate,
Custom House, Chennai - 600 001. .. Respondent

Writ Appeal filed against the order dated 10.10.2017 in
W.P.No.26435 of 2017.

WP.NO.26435/2017:

Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records connected with order in Original No.57399 of 2017 dated 3.8.2017 passed by the respondent herein ordering for revocation of customs broker license No.CHN/ R-294/2013 held by the petitioner imposing the penalty and forfeiture of security deposit furnished by the petitioner and to quash the same as the same has been passed without jurisdiction and authority of law.

For Appellant : Mr.N.Viswanathan
For Respondent : Mr.M.Santhanaraman

JUDGMENT

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

Order in original No.57399 of 2017 dated 03.08.2017 passed by the Commissioner of Customs, Chennai VIII Commissionerate, Chennai, sought to be quashed in W.P.No.26435 of 2017, is extracted hereunder

"ORDER

21. In view of the abovementioned facts, findings and discussion and in exercise of the powers conferred upon me under the provisions of Regulation 20(7) of the Customs Brokers Licensing Regulations, 2013, I order as

below:

(i) I revoke the Customs Broker Licence No.CHN/R-294/2013 given to the Customs Broker, M/s.Raj Brothers Shipping Pvt. Ltd with immediate effect. However, they are permitted to finish the cases where Bill of entries or Shipping bills have been already filed by them.

(ii) Since, the license of Customs Broker, M/s.Raj Brothers Shipping Pvt. Ltd., is revoked, the "G" Cards and "F" Cards issued to the employees of M/s.Raj Brothers Shipping Pvt. Ltd. should be surrendered forthwith after the cases as mentioned at (i) above are over.

(iii) Further, I impose a penalty of Rs.50,000/- on the Customs Broker, M/s.Raj Brothers Shipping Pvt. Ltd., Licence No.CHR/R-294/2013 (PAN No.AAGCR3940M) under Regulation 18 of CBLR, 2013.

(iv) Further, I forfeit the Security Deposit of Rs.5,00,000/- made by M/s.Raj Brothers Shipping Pvt. Ltd., in terms of Regulation 18 of CBLR, 2013.

22. This order is issued without prejudice to any other action that may be taken against the Customs Broker and their employees / representatives etc., under the provisions of Customs Law or any other Act for the time being in force in the Union of India."

2. Adverting to the submissions and more particularly, to the statement of an importer that a sum of Rs.2 Lakhs was received, to be paid to the Investigating Agencies, writ Court in W.P.No.26435 of 2017 dated 10.10.2017, ordered as hereunder

"3. The learned counsel for the petitioner pointed out that the petitioner had received had received a sum of Rs.2,00,000/- from his client who is the importer and the importer and the transaction having been done through approved banking channel, there can be no allegation made against the petitioner in the discharge of his duties as a Customs Broker. Further, it is contended that the show cause notice did not specifically allege as to which regulation of the Customs Brokers Licensing Regulation, 2013, the petitioner had violated.

4. After elaborately hearing the learned counsel for the petitioner as well as the learned Standing Counsel for the respondent, I find that to answer two contentions raised by the petitioner, a thorough factual exercise has to be done. The respondent has pointed out as to when the amount has been reimbursed by the client to the petitioner and noted that it was done much after customs duty was remitted by the petitioner. The importer has given a statement that

the petitioner was arm twisted to pay a sum of Rs.2,00,000/- and the same was on the ground it has to be paid to the Investigating Agencies. Thus, these factual aspects cannot be gone into in a writ petition, as the petitioner has an effective alternate remedy under the provisions of the Customs Act, by approaching the appellate authority.

5. Thus, for the above reasons, the Writ Petition is not maintainable and accordingly, the same is dismissed, leaving it open to the petitioner to avail the appellate remedy. No Costs. Consequently, connected Miscellaneous Petitions are closed."

3. Though Mr.N.Viswanathan, learned counsel for the appellant assailed the correctness of the order-in-original and made submissions, as rightly ordered by the writ Court, facts cannot be gone into when there is an effective and alternate remedy of challenging the order-in-original, before CESTAT, Madras. Plea that on presumption that the order-in-original has been passed by revoking Customs Brokers Licensing Regulations, 2013, cannot be countenanced at this stage.

4. On more than one occasion, Hon'ble Supreme Court as well as this Court, held that when there is an effective and alternate remedy, provided under the taxing laws, writ petitions, should not be entertained. 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 created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

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}, this Court held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

5. In the light of the above discussion and decisions, we are of the view that order of the writ Court made in W.P.No26435 of 2017 dated 10.10.2017, directing the appellant to avail the alternate remedy provided under the statute, cannot be said to be manifestly illegal warranting interference. Hence, instant writ appeal is dismissed. No Costs.

6. After the dismissal of the writ appeal, Mr.N.Viswanathan, learned counsel for the appellant submitted that time for preferring an appeal against the order dated 03.08.2017, made in order-in-original No.57399 of 2017, has expired and that therefore, writ Court, may grant sufficient time to prefer an appeal to CESTAT, Madras.

7. Placing on record the above submission, we grant three weeks time, from the date of receipt of a copy of this order, to the appellant to file an appeal. It is also made clear that if any appeal is filed, CESTAT Madras, shall process the same, taking note of the directions issued. Tribunal may also consider the expedite hearing of the appeal.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

The Commissioner of Customs
Chennai VIII Commissionerate,
Custom House, Chennai - 600 001.

+1cc to Mr.N.Viswanathan, Advocate sr.no.27472 (04/06/2018)

W.A.No.686 of 2018

nr 11/04/2018