

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.894 of 2018

M/s.Trinity Forwarders (Madras),
No.25, First Floor, R.R.Complex,
No.1, Murthy Lane, Rattan Bazaar,
Chennai - 600 003,
Rep. by its Authorised signatory,
Shri R.Vasudevan ..Appellant/petitioner

Vs.

The Commissioner of Customs,
Chennai VIII Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001. ... Respondent/Respondent

Writ Appeals filed under Clause 15 of the Letters Patent against the Order dated 18.04.2016 made in W.P. No.639 of 2016.

Prayer in WP.No.639 of 2016:Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to Call for the records of the respondent in F.No. R-609/CHA leading to passing of Order-In-Original No.35928/2015 dated 24.03.2015 quash the same and further direct the said respondent to renew and activate the petitioners Custom House Agent Licence in No.R-609/CHA.

For Appellant : Mr.B.Satish Sundar

J U D G E M E N T

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

Being aggrieved by the order in original dated 24.03.2015, revoking Customs House Agent Licence, W.P.No.639 of 2006 has been filed, for a writ of certiorarified mandamus, to quash the records of the respondent in F.No.R-609/CHA, Order-in-Original No.35928/2015 dated 24.03.2015, and for a further direction to the respondent to renew and activate the petitioner/appellant's Custom House Agent Licence in No.R-609/CHA.

2. Though, the said order was mainly challenged on the grounds that the reasons for disagreeing with the enquiry report was not furnished and thus, there was a violation of the principles of natural justice, besides, time limit prescribed in the regulation, was not adhered to, writ Court, by rejecting the judgment relied on by the petitioner/appellant, dismissed the writ petition, giving liberty to the petitioner/appellant to go before the appellate authority, by way of an appeal, in accordance with law.

3. Though the instant writ appeal has been filed reiterating the same grounds, we do not want to deal with the same on merits, inasmuch as there is no manifest illegality in directing the writ petitioner to approach, the forum provided under the Customs Act, 1962. On more than one occasions, 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.

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 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 para 36, 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.

4. In the light of the above discussion and decisions, while sustaining the order of the writ Court, we permit the writ petitioner to prefer a statutory appeal, within a period of one month from the date of receipt of a copy of this order. Writ Appeal is dismissed. No costs. We make it clear that if any appeal is filed, time spent in the litigation, be excluded.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Note to office:

Registry is directed to return the order-in-original, filed in W.P.No.639 of 2016, after obtaining an attested copy of the same from the learned counsel for the petitioner/appellant.

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To
The Commissioner of Customs
Chennai, VIII Commissionerate
Custom House, No.60, Rajaji Salai
Chennai 600 001

copy to
The Section Officer
ER Section
High Court, Madras

+2 cc to Mr.B.Satishsundar Advocate sr 34452

+1 cc to Ms.R.Hemalatha Advocate sr 34987

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W.A.No.894 of 2018

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