THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.2284 OF 2018

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the Order in Original dated 14.06.2017 passed by the Additional Commissioner, Office of the Principal Commissioner of Service Tax, Hyderabad Service Tax Commissionerate. The prayer of the petitioner in relation thereto reads as under:

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue an appropriate order or direction more particularly in the nature of writ of mandamus declaring the action of the 3rd Respondent in passing the Order in Original No.138/2016 dated 14.06.2017 of said Order by the 3rd respondent is illegal, arbitrary and contrary to the Notification No.25/2012-Service Tax, consequently set aside the same and to pass such other order or orders as this Hon'ble Court may deem fit just and proper in the circumstances of the case."

It is not the case of the petitioner that it was not aware of the proceedings before the Original Authority. Perusal of the order under challenge reflects that the petitioner was afforded a full hearing before a decision was taken. Despite the fact that the Order in Original specifically recorded that an appeal would lie therefrom under Section 85 of the Finance Act, 1994, to the Commissioner (Appeals), the petitioner has chosen to come before this Court by invoking our extraordinary jurisdiction under Article 226 of the Constitution.

When the statute provides an efficacious alternative remedy in the form of an appeal, we are of the opinion that the party aggrieved cannot be permitted to invoke the writ jurisdiction of this Court.

Article 226 of the Constitution is not meant to short-circuit or circumvent statutory procedures. Where the statute itself provides the petitioner with an efficacious alternative remedy by way of an appeal and a second appeal, it is not for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring, as it were, the complete statutory machinery (See ASSISTANT COLLECTOR OF CENTRAL EXCISE, CHANDAN NAGAR, WEST BENGAL v. DUNLOP INDIA LTD[1] and TITAGHUR PAPERMILLS CO. LTD. v. STATE OF ORISSA[2]).

The writ petition is accordingly dismissed on this short ground. Needless to state, this order shall not preclude the petitioner from working out its remedies before the appropriate forum in accordance with law.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

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P. KESHAVA RAO,J

Date:29.01.2018
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[1] (1985) 1 SCC 260 = 1985 SCC (Tax) 75
[2] (1983) 2 SCC 433 = 1983 Tax LR 2905 = (1983) 142 ITR 663