HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

<u>Writ Petition No.34755 of 2018</u>

<u>ORDER:</u> {Per Hon'ble Sri Justice Ramesh Ranganathan}

The proceedings under challenge in this writ petition is the order in original dated 31.08.2018 passed by the Additional Commissioner whereby a demand of Rs.1,19,23,099/- towards service tax was confirmed in terms of Section 73(2) of the Finance Act, 1994 read with the proviso to Section 73(1) of the Finance Act, 1994, besides levying penalty of Rs.10,000/- as penalty under Section 77(2) of the Finance Act, 1994 and a personal penalty of Rs.1,00,000/- on the DGM (Finance & Accounts).

Sri N.Ram Reddy, learned counsel for the petitioners, would submit that the order of the Additional Commissioner is vitiated for violation of the principles of natural justice, in as much as the petitioners have been denied the right to cross-examine the witnesses whose statements were relied upon by the authority concerned. He would also submit that, while the petitioners have the remedy of appeal to the Commissioner, the said statutory appellate remedy is onerous in as much as it requires a pre-deposit of 7.5% of the disputed tax and penalty to be made as a condition for an appeal to be entertained.

We must express our inability to agree with either of these two contentions. The jurisdiction exercised by this Court, under Article 226 of the Constitution of India, is discretionary; and this Court would, ordinarily, refuse to exercise discretion to entertain a writ petitioner where the petitioner has an effective alternative statutory remedy of appeal. The fact that the petitioners have an appellate remedy has not been disputed before us.

While it is no doubt true that the jurisdiction of this Court can always be invoked even in cases where a statutory remedy of an appeal exists, the question whether such a writ petition should be entertained or the petitioner should be relegated to avail their appellate remedy is a matter within the discretion of this Court to be exercised for just and valid reasons. In the present case, the petitioners' contention that they should be permitted to cross-examine certain witnesses was considered elaborately by the adjudicating authority and, after relying on several judgments, their request was negatived.

While we may not be understood to have held that the adjudicating authority is justified in refusing to permit the petitioners to cross-examine those witnesses, all that we are holding is that this contention, regarding the petitioners not being given an opportunity of cross-examining the witnesses, can be urged before the appellate authority also.

With regards the petitioners' contention that the appellate remedy is onerous, as it requires pre-deposit to be made, it is settled law that, if a statute prescribes an appellate remedy with a condition of pre-deposit, such an appeal can only be entertained on compliance with the pre-deposit requirement; and this would not justify the petitioners invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

We see no reason, therefore, to entertain the writ petition. Suffice it to observe that, in case the petitioners avail the statutory remedy of appeal to the Commissioner, their appeal shall be examined on its merits uninfluenced by any observations made by us in this order.

The Writ Petition is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

26th September, 2018
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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.34755 of 2018

Date: 26.09.2018

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