

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-12920-2016

Date of Decision: 15.5.2018

M/s Amarnath Industries, Kathua, Jammu

....Petitioner.

Versus

Union of India and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

PRESENT: Mr. Man Mohan Singh, Advocate for
Mr. Suman Jain, Advocate for the petitioner,
(in CWP-12920 to 12923-2016)

Mr. Pawan Kumar Pahwa, Advocate,
for the petitioner (in CWP-12926-2016)

Ms. Manpreet Kaur, Advocate for
Ms. Chanderhas Yadav, Advocate for the petitioners,
(in CWP-23300-2016 and 7860-2017).

Mr. Tajender K. Joshi, Advocate for the respondents.

AJAY KUMAR MITTAL, ACJ.

1. This order shall dispose of a bunch of seven petitions bearing CWP Nos.12920-12923, 12926 and 23300 of 2016 and 7860 of 2017 as according to learned counsel for the parties, similar issues arise for consideration in these petitions. For brevity, the facts are being extracted from CWP-12920-2016.

2. In CWP-12920-2016 filed under Article 226 of the Constitution

of India, the petitioner has prayed for issuance of a writ of in the nature of certiorari for quashing the order-in-original dated 17.5.2016 (Annexure P-1) passed by respondent No.2.

3. A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is registered with the Central Excise Authorities for manufacture of menthol, Dementholised Oil (DMO) and Deterpenated Fractionated Menthol Oil (DFMO) besides other items and is located in Gangyal Industrial Area, Jammu. Notification dated 14.11.2002 confers area based exemption from payment of duty under the Central Excise Act, 1944 (in short "the Act"). The petitioner's manufacturing unit was also entitled to the said exemption. As per the said notification, the units entitled to exemption therein are first required to pay duty on the clearances effected by them whereafter refund of the said duty to the extent it had been paid otherwise then by way of utilization of Cenvat Credit it had been paid from the Personal Ledger Account (PLA) maintained by the assessee, is refunded. The entitled benefit of the said exemption, the petitioner's unit was granted refund for clearances effected by it during the period November, 2007 to 2010. The petitioner was issued a show cause notice to the effect that during the period from November, 2007 to December, 2009, it took credit of Central Excise duty paid through PLA amounting to ₹ 8,76,47,883/- under self credit option available under the notification dated 14.11.2002. The said show cause notice was assigned for adjudication to respondent No.2 vide corrigendum dated 29.4.2015. Respondent No.2 vide order-in-original dated 17.5.2016 (Annexure P-1) confirmed the demand of ₹ 8,76,47,883/- and also imposed the penalty of equal amount upon the petitioner besides the penalties of ₹ 5,00,000/- each

upon two partners of the petitioner and Shri Sameer Kumar Jain, Prop. M/s Bareilly Agro Prdocuts, Bareilly and Shri Neeraj Prasad Soni, Properietor M/s Neeraj Traders, Lucknow. Hence, the present writ petition.

4. Upon notice of motion having been issued, respondent No.2 filed reply controverting the averments made in the writ petition. It was pleaded therein that the order dated 17.5.2016 (Annexure P-1) was an appealable order before the Customs, Excise and Service Tax Appellate Tribunal under Section 35 of the Act. The other averments made in the writ petition were denied and a prayer for dismissal of the writ petition was made.

5. After hearing learned counsel for the parties and perusing the averments made in the petition, we find that the petitioner has an alternative remedy of appeal against the impugned order. The narration of facts noticed hereinbefore clearly shows that certain factual matrix is required to be established for which the first appellate authority would be proper forum instead of invoking writ jurisdiction of this Court under Article 226 of the Constitution of India at the first instance.

6. The Apex Court in **Commissioner of Income Tax and others vs. Chhabil Dass Agarwal, (2013) 357 ITR 357**, considered the question of entertaining writ petition where alternative statutory remedy was available. After examining the relevant case law on the point, it was recorded as under:-

“14. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act

in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.

15. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: **State of U.P. vs. Mohammad Nooh**, AIR 1958 SC 86; **Titaghur Paper Mills Co. Ltd. vs. State of Orissa**, (1983) 2 SCC 433; **Harbanslal Sahnia vs. Indian Oil Corpn. Ltd.**, (2003) 2 SCC 107; **State of H.P. vs. Gujarat Ambuja Cement Ltd.**, (2005) 6 SCC 499).

16. The Constitution Benches of this Court in **K.S. Rashid and Sons vs. Income Tax Investigation**

Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

(See: **N.T. Veluswami Thevar vs. G. Raja Nainar, AIR 1959 SC 422; Municipal Council, Khurai vs. Kamal Kumar, (1965) 2 SCR 653; Siliguri Municipality vs. Amalendu Das, (1984) 2 SCC 436; S.T. Muthusami vs. K. Natarajan, (1988) 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, (1995) 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan, (2000) 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., (2001) 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha**

Utpadak Sanstha vs. State of Maharashtra, (2001) 8 SCC 509; Pratap Singh vs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, (2003) 1 SCC 72).

17. In **Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337**, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

“12. In **Thansingh Nathmal v. Supdt. of Taxes, AIR 1964 SC 1419** this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

“7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition

under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

13. In **Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433** this Court observed: (SCC pp. 440-41, para 11)

“11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by **Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford, 141 ER 486** in the following passage: (ER p. 495) ‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by

the statute must be adopted and adhered to.’

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.*, 1919 AC 368 and has been reaffirmed by the Privy Council in ***Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.***, 1935 AC 532 (PC) and ***Secy. of State v. Mask and Co.***, AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”

14. In ***Mafatlal Industries Ltd. v. Union of India***, (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

“77. ... So far as the jurisdiction of the High Court under Article 226-or for that matter, the jurisdiction of this Court under Article 32-is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court

would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.””(See: **G. Veerappa Pillai v. Raman & Raman Ltd.**, AIR 1952 SC 192; **CCE v. Dunlop India Ltd.**, (1985) 1 SCC 260; **Ramendra Kishore Biswas v. State of Tripura**, (1999) 1 SCC 472; **Shivgonda Anna Patil v. State of Maharashtra**, (1999) 3 SCC 5; **C.A. Abraham v. ITO**, (1961) 2 SCR 765; **Titaghur Paper Mills Co. Ltd. v. State of Orissa**, (1983) 2 SCC 433; **H.B. Gandhi v. Gopi Nath and Sons**, 1992 Supp (2) SCC 312; **Whirlpool Corpn. v. Registrar of Trade Marks**, (1998) 8 SCC 1; **Tin Plate Co. of India Ltd. v. State of Bihar**, (1998) 8 SCC 272; **Sheela Devi v. Jaspal Singh**, (1999) 1 SCC 209 and **Punjab National Bank v. O.C. Krishnan**, (2001) 6 SCC 569).

18. In **Union of India vs. Guwahati Carbon Ltd.**, (2012) 11 SCC 651, this Court has reiterated the aforesaid principle and observed:

“8. Before we discuss the correctness of the impugned order, we intend to remind

ourselves the observations made by this Court in **Munshi Ram v. Municipal Committee, Chheharta, (1979) 3 SCC 83**. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

“23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.”

7. This Court in **Larsen and Toubro Limited v. The State of Haryana and others, 2012(2) 166 PLR 345**, considering the question of entertaining writ petition where alternate statutory remedy was available, had in paras 6 and 7 observed thus :-

“6. The following are the broad principles when a writ petition can be entertained without insisting for adopting statutory remedies:-

- i) where the writ petition seeks enforcement of any of the fundamental rights;
- ii) where there is failure of principles of natural justice; or
- iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

7. We are not inclined to entertain this petition

against the assessment order as it does not fulfil any of the broad outlines noticed herein above.....”.

8. In view of the above, the writ petitions are disposed of by relegating the petitioners to alternative remedy of appeal against the impugned orders. In case the appeals are filed by the petitioners within a period of one month from the date of receipt of the certified copy of the order, the same shall not be dismissed on the ground of limitation and shall be decided in accordance with law.

**(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE**

May 15, 2018
gbs

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes