

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4098 of 2019

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Shri Rajkumar Gupta @ Raj Kumar Sultania @ Raju Sultania S/o Late
Srinivas Sultania R/o Ghagha Gali, Patna City, P.S.- Khajekalan, Dist- Patna
... .. Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Finance, New Delhi
2. The Commissioner, Central GST and Central Excise, Patna- I, Patna
... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 4374 of 2019

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Lallu Prasad S/o Late Heera Lal, Proprietor-M/s Shani Dev Enterprises, R/o
Pua Gali, Patna City, P.S. Chowk, Dist.- Patna.
... .. Petitioner/s

Versus

1. Union of India through its Secretary, Ministry of Finance, New Delhi.
2. The Commissioner, Central GST and Central Excise, Patna-I, Patna.
... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 4541 of 2019

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Santosh Jodhwani @ Santosh Kumar Jodhwani S/o Prithvi Raj M/s S.S.D.
and Company, R/o H.No. D-404, Taigore Nagar, Distt.- Raipur, Chhatisgarh
... .. Petitioner/s

Versus

1. Union of India through its Secretary, Ministry of Finance, New Delhi
2. The Commissioner Central GST and Central Excise, Patna-1, Patna
... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 4542 of 2019

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Anand Kumar Tejwani @ Anand Tejwani S/o Late Khubchand Tejwani
Proprietor- M/s Shankar Traders, R/o Ward No. 20, Sindhi Colony, Lal Bagh,
P.s.- Rajnandgaon, Distt.- Rajnandgaon, Chhatisgardh-491441
... .. Petitioner/s

Versus

1. Union of India through its Secretary, Ministry of Finance, New Delhi.
 2. The Commissioner, Central GST and Central Excise, Patna-1, Patna
... .. Respondent/s
- =====



with
Civil Writ Jurisdiction Case No. 4645 of 2019

Ramesh Sultania S/o Late Phulchand Sultania, R/o Ghagha Gali, P.S.
Khajakalan, Dist.- Patna.

... .. Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Finance, New Delhi.
 2. The Commissioner, Central GST and Central Excise, Patna-I, Patna.
- Respondent/s

with
Civil Writ Jurisdiction Case No. 8335 of 2019

Deepak Singh, S/o Sri Ved Prakash Singh, R/o Noorpur, Bazar Samiti, P.S.-
Didarganj, Dist.-Patna

... .. Petitioner/s

Versus

1. Union of India through its Secretary Ministry of Finance, New Delhi.
 2. The Commissioner, Central GST and Central Excise, Patna
- Respondent/s

Appearance :

(In all the above petitions)

For the Petitioner/s	:	Mr. N.K.Agrawal, Sr. Advocate Mr. Prakash Chandra Agrawal, Advocate
For the Respondent/s	:	Dr. K.N.Singh, Addl. S.G. Mr. Rajesh Kumar Verma, AC to Addl. S.G.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-01-2021

Similar set of prayers and facts are made in all the writ
petitions, which are disposed of vide this common judgment.

For ready reference, we reproduce the prayers made by
the petitioners in the first petition, i.e. CWJC No.4098 of 2019
titled as Shri Raj Kumar Gupta @ Raj Kumar Sultania @ Raju



Sultania Versus The Union of India & anr.:

“(a) For holding the Order-In-Original No. 16/MP/Ayukt/2018 dated 05.10.2018 and the Corrigendum being C. No. V(15)33-Adjn/2014/12895 dated 22.11.2018 issued by the Respondent No. 2 as being illegal, invalid and unsustainable in the eye of law.

(b) For issuance of a consequential writ or order or direction upon the respondents to allow the petitioner to grant an opportunity of cross-examination of persons whose statements are relied upon and also officers of the Department in terms of the reply dated 23/24.06.2015 and 18.11.2016;

(c) For issuance of a direction to the respondents to supply the entire documents/ evidences to the petitioner upon which they relied upon and passed the impugned order as against the petitioner;

(d) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.”

2. Having heard learned counsel for the parties, we consider that preliminary objection raised by Dr. K.N.Singh, learned Addl. S.G., about maintainability of the writ petitions, in the teeth of statutory provisions of availability of an equally alternative remedy stipulated under the Statute (Appeal and Revision, Chapter VI-A of the Central Excise Act, 1944), needs to be sustained.

3. We do not find the impugned order dated 05.10.2018



passed by the assessing authority, under the provisions of the Central Excise Act, 1944 (hereinafter referred to as the 'Act'), to be *ex facie* or patently perverse or passed in total/ utter violation of the principle of natural justice, warranting interference by this Court, more so when the mixed question of fact and law are involved.

4. It is not that the Statutory Authority has not acted in accordance with the provisions of the enactment in question; defiance of fundamental principles of judicial procedure; resorted to invoke the provisions already repealed; or the procedure adopted and the order is in total violation of the principles of natural justice.

5. In **State of U.P. V. Sudhir Kumar Singh; 2020 SCC online page 847**, the Apex Court has culled out certain guiding principles for entertaining a petition under Article 226 of the Constitution of India alleging breach of principles of natural justice. They are:- (1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se



does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest. (3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice. (4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person. (5) The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice. (Para-39).

6. The grounds of challenge, limited in nature, urged



before us, are two fold:- (a) the petitioners are not in a capacity, on account of financial hardship, to meet the condition of prerequisite deposit of the amount, statutorily required for preferring an appeal ; (b) the order violates the principles of natural justice, since witnesses supporting the revenue were not allowed to be cross-examined during the course of adjudicatory proceedings.

7. In support thereof, Shri N.K.Agrawal, learned senior counsel for the petitioners, places reliance upon the decisions rendered by the Apex Court in **Lakshman Exports Ltd. v. Collector of Central Excise; (2005) 10 SCC 634, Rajiv Arora vs. Union of India & Ors.; AIR 2009 SC 1100; Andaman Timber Industries vs. Commissioner of C.Ex., Kolkata-II; 2015(324) E.L.T. 641(S.C.) and Arya Abhushan Bhandar v. Union of India & Ors.; 2002 (143) E.L.T. 25 (S.C.)**.

8. On the other hand, Dr. K.N.Singh, learned Addl. S.G., has placed reliance upon the Apex Court's various decisions in **Kanungo & Co. Vs. The Collector of Customs & Ors.; (1973) 2 SCC 438, Union of India v. Alok Kumar; (2010) 5 SCC 349, Authorized Officer, State Bank of Travancore & Anr. V. Mathew K.C.; (2018) 3 SCC 85**, and upon a decision rendered by a co-ordinate Bench of this Court in **ALCATEL**



Modi Net Work System Limited vs. The State of Bihar & Ors.; 2000(2) PLJR 295.

9. It is a settled principle of law that normally a writ court ought not to entertain a petition under Article 226 of India's Constitution in the teeth of availability of an alternative statutory remedy unless, of course, it vitally infringes upon the fundamental rights of the petitioner. What is the parameter warranting the Court to entertain a petition, more specifically concerning the fiscal Statute, is very well laid down by the Apex Court in **CIT v. Chhabil Dass Agarwal; (2014) 1 SCC 603**.

10 Emphatically, the Court has propounded that no interference, under Article 226 of India's Constitution, is warranted unless, of course, the order passed is in "total" violation of the principles of natural justice and, given the law propounded in **Kanaiyalal Lalchand Sachdev & Ors. v. State of Maharashtra; (2011) 2 SCC 782**.

11. In our opinion, the petitioners have failed to establish how the order passed is in "total" violation of the principles of natural justice. What prejudice, much less serious in nature, stands caused on account of non-examination of the witnesses, is also not born out from the material on record or demonstrated before us.



12. We may not be understood to have expressed any opinion on the merits of the same, but only highlight the issue, limited for determining the problems urged before us.

13. The assessing authority has found the petitioners and concerns associated with them, dealing in the product i.e. production/trade of cigarettes, which are excisable under the Act. On 13th December 2013, a raid was conducted, *inter alia*, at the petitioner's premises, and got recovered huge stocks of more than two crores of cigarette sticks. The petitioners were arrested, and their statement recorded while in judicial custody. During the search and seizure operations, statements of other witnesses were also recorded and the material, inculpatory in nature, recovered from the conscious possession of the petitioners/associated persons and premises. The search was conducted at different places in the States of Chhatisgarh, Jharkhand and Bihar.

14. With the completion of search and seizure operations, petitioners and associated persons were issued notices for carrying out the adjudicatory proceedings under the Central Excise Act's provisions, 1944 read with Central Excise Rules, 2002. While declining the petitioner's request for cross-examining the witnesses, the adjudicatory authority ultimately passed the impugned order dated 05.10.2018 and corrigendum



order dated 22.11.2018. The relevant portion of impugned orders reads as under:-

“105 In view of the aforesaid discussion and findings. I pass the following orders:-

ORDER

(i) I confirm the demand of Central Excise Duty including AFD, NCCD, Ed. Cess and Secondary and Higher Ed. Cess

... ..

(iv) I order to confiscate 16,54,261 sticks of filter cigarettes of 'Sunils Two' & 'India 10' brands valued at Rs.32,38,409/- which were seized on 30.05.2014 from the unregistered cigarette manufacturing factory of Shri Raju Sultania, running in the name and style of M/s Shani Dev Enterprises at Vill.-Mohiuddinpur (Vill.-Narma), Fatuha Danlayava Road, Nai Sadak, Distt.-Patna under Rule 25 of the Central Excise Rules 2002. However, I give an option to pay Redemption fine in lieu of confiscation which shall be 50% of the value of the goods. The release of such goods on payment of redemption fine shall be done only after the goods are found to be fit for human consumption and meets the other legal requirement relating to health and safety.

.... ..

(vii) I further order to confiscate the unaccounted quantity of 2,52,10,000 sticks of non filter and filter cigarettes of various brands valued at Rs. 4,20,68,760/- which had been seized on 30.05.2014 from the undeclared godown of Shri Raju Sultanja situated at Didarganj, Near Godrej Warehouse,



Fatuha, Dist Patna under Rule 25 of the Central Excise Rules, 2002. However, I give an option to pay Redemption fine in lieu of confiscation which shall be 50% of the value of the goods. The release of such goods on payment of redemption fine shall be done only after the goods are found to be fit for human consumption and meets the other legal requirement relating to health and safety.

... ..

(ix) I order to confiscate the unaccounted quantity of 4,79,500 sticks of filter cigarettes of various brands valued at Rs.9,35,025/-seized on 30.05.2014 the undeclared godown of Shri Raju Sultanja situated at Jharkhand Tola, Village- Daniyava, Dist-Patna under Rule 25 of the Central Excise Rules, 2002.

However, I give an option to pay Redemption fine in lieu of confiscation which shall be 50% of the value of the goods. The release of such goods on payment of redemption fine shall be done only after the goods are found to be fit for human consumption and meets the other legal requirement relating to health and safety.

... ..

(xi) I also order to confiscate the unaccounted quantity of 3,24,000 sticks of filter cigarettes of India 10', brand valued at Rs.6,48,000/-, illicitly manufactured and clandestinely cleared without payment of Central Excise duty by Shri Raju Sultania and were seized on 18.11.2014 from the business premises of Shri Anand Tejawani, Proprietor of M/s Shankar Traders, G.E.Road, Opp.- Kikabhai Complex, Near Jalaram Sweets, Rajnandgaon (C.G.) under Rule 25 of the Central Excise Rules, 2002. However, give



an option to pay Redemption fine in lieu of confiscation which shall be 50% of the value of the goods. The release of such goods on payment of redemption fine shall be done only after the goods are found to be fit for human consumption and meets the other legal requirement relating to health and safety.

(Emphasis supplied)

15. We find the adjudicatory authority, to consider the requirement of cross-examination of the witnesses, which is reproduced as under:

“Defence reply furnished by the noticee no. 1 is limited to cross examination of the entire investigation team, Panch witnesses, Police team and timing of the investigation and search. But on the facts no noticee has uttered any plausible and believable reply. Once Show cause notice has been issued onus is on the noticee to reply. The presumptions and believe of the noticee no. 1 cannot be taken as evidence to counter the evidence adduced by DGCEI. Further, the notice also mention documentary evidence proving the leviability of Central Excise Duty and intent to evade payment of Duty does the objections raised by the noticee no. 1 is not tenable as it has not been substantiated by the noticee no. 1 as to why cross examination of the witnesses are needed. If cross examination relates with time of search and time of statement given by the noticee no. 1, then it has no relevance.”

(Emphasis supplied)

16. What is important is that the petitioners have not



denied the recovery of vast sticks of cigarettes from different premises during search and seizure operations. Before use, it is also not disputed that the petitioners deal with such products. As such, we need not delve any further into the merits of the order because we are convinced that the petitioner has not made out a case for interference in the present petition and all pleas can conveniently be taken in an appeal.

17. In **Kanungo** (supra), in fact, we find the issue to have been squarely dealt with by Hon'ble the Apex Court in relation to Sea Customs Act, 1878 dealing with similar issue and for benefit; we extract the observations made as under:

“12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant.”

18. The said decision has been followed in **Telstar Travels (P) Ltd. v. Enforcement Directorate, (2013) 9 SCC 549.**



19. To similar effect, though in a different Statute is another decision rendered in **Alok Kumar** (supra).

20. Here, we may also take note of the observations made by the Apex Court in **Mathew K.C.'s** case (supra), which reads as under:-

“10. In *Satyawati Tondon*; (2010) 8 SCC 110, the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp. 123 & 128, paras 43 & 55).

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 legislation enacted by Parliament



and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they 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.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and Circumspection."

21. We notice that the Apex Court, in **Lakshman Exports Limited (supra)**, was itself convinced of violation of principles of natural justice resulting into loss suffered by the petitioner therein. Such opinion perhaps emanated from the difference of opinion amongst the Bench members passing the impugned orders. The Apex Court intervened and remanded the



matter for adjudication.

22. Similar is the position in **Arya Abhushan Bhandar** (supra).

23. In **Andaman Timber Industries** (supra), the Apex Court interfered finding the appellate authority not to have dealt with the plea of prejudice caused to the petitioner on account of non-examination of the material witnesses relied upon by the petitioner. Also, **Rajiv Arora's** case (supra) does not deal with the issue of prejudice caused to the petitioner but nonetheless, what is to be considered is whether material prejudice, if any, stands caused to the petitioner.

24. Well, in our considered view, all these questions of fact and law can undoubtedly be considered and dealt with by appellate authority. We notice that the proceedings stood procrastinated, be it for whatever reason. The Revenue attributes the same upon the petitioners and vice versa. Well, we are not expressing any opinion thereupon, save and except, the adjudicatory process ought to be completed at the earliest, which was not done. The assessing authority took more than five years in determining evasion of a massive amount of tax.

25. We find that the Act itself provides a complete mechanism for deciding all disputes and questions legal or



factual. The appellate authority can expeditiously decide all issues, including the grievances raised herein.

26. This Court in **ALCATEL Modi Net Work System Limited** (supra) itself has observed as under:-

“5. In so far as his plea is concerned, the petitioner has filed a petition in the High Court’s prerogative with jurisdiction. An objection has been taken in the counter affidavit, already, that if the assessment order is illegal, there is a clear cut recourse to an alternate remedy by way of an appeal under Section 45 of the Act available to the petitioner. On this proposition, it was vehemently argued that once the petition had been accepted at the admission stage, the respondents are barred from raising a plea of alternate remedy and challenging the merits of the contention raised in the petition and the assessment order does not hold and stands negated as the jurisdiction is of the authority under the Central Sales Tax Act, 1956. The Court is not inclined to accept this suggestion that the respondents may not raise the plea of alternate remedy. Such a plea may be taken at any time as it is a plea of jurisdiction in itself which goes to the root of the matter.

6. Besides, at the High Court for a matter to be heard leave has to be sought unless it is an appeal by right. On a *certiorari* action, the High Court has to certify a case, good for hearing; there are no short cuts to admission.

7. It is well known that a writ jurisdiction of the High Court is not available in generality when the



Statute itself has provided an alternate remedy of an appeal. Maybe, the provision which be the alternate remedy from the business point of view may be irksome and the present assessee may be required to deposit an amount, 20 per cent, before filing the appeal. But, the legislature has structured the Statute, thus. The petitioner may take recourse to an appeal under Section 45 of the Act and may contend whatever he contents before appellate authority. The petitioner is relegated to take recourse to an alternate remedy under Section 45 of the Act.”

27. Hence, financial incapacity cannot be a ground for maintaining the present petitions.

28. As such, on both counts, as urged by Shri N.K.Agrawal, learned senior counsel, before us, we see no reason to interfere in the matter; thus, we dispose of the present petitions with the following directions:-

- (a) Petitioners have been pursuing the remedy before this Court, hence if petitioners take recourse to remedy provided under the Act, within a period of four weeks, the issue of limitation shall not be allowed to come in the way of it's adjudication on merits;
- (b) Such proceedings shall expeditiously be decided on merits, per law, preferably within a period of six



months from the date of initiation;

(c) both parties shall fully co-operate and not take any unnecessary adjournment;

(d) petitioners' request for waiver of the amount of pre-deposit, if admissible under law, shall be considered;

(e) the appeal and the application, shall be considered uninfluenced by any of the observations made by this Court.

29. The petitions stand disposed of in the terms above.

30. Interlocutory application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

AFR/NAFR	AFR
CAV DATE	
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