IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

996 WRIT PETITION NO. 3972 OF 2020

CHAVARA TRUST CMI ASHRAM THROUGH ITS SECRETARY
SEBI THOMAS PARAKKAL
VERSUS
UNION OF INDIA THROUGH ASSISTANT COMMISSIONER OF
INCOME TAX (EXEMPTIONS), AURANGABAD
...
Advocate for Petitioner: Mr. Shah Subodh P.
Standing Counsel for Respondent/Sole:
Mr. Alok M. Sharma
...

CORAM: S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.
DATE: 14th JANUARY, 2021

PER COURT:

1. Mr. Shah, learned Counsel for the petitioner submits that the petitioner is challenging the assessment order so also order directing pre-deposit.

2. Mr. Shah, learned Counsel submits that the petitioner by way of abundant caution has also filed an appeal against the order of assessment, however that would not be an impediment to entertain the writ under Article 226 of the Constitution. The assessment order is passed in

breach of the principles of natural justice. The learned Counsel relies on the judgment of the Division Bench of this Court in case of **Vodafone India Limited Vs. Union of India and others** reported in **(2014) 265 CTR 42.** The learned Counsel further submits that directing petitioner to deposit 20% of the amount as pre-deposit is too harsh, hardship would be caused to the petitioner. The learned Counsel submits that the appellate authority ought to have considered that the assessment order is without affording proper opportunity to the petitioner, only 24 hours time was provided to the petitioner to reply the show cause notice. As no proper opportunity has been given, the pre-deposit ought to have been waived. The learned Counsel further submits that it is not the thumb rule that the appellate authority has to order 20% pre-deposit. The discretion vests with the appellate authority to direct deposit of a lessor amount or in deserving cases may not insist for pre-deposit. The learned Counsel relies on the judgment of the Apex Court in case of **Benera**

Valves Ltd. and others Vs. Commissioner of Central Excise and another reported in **(2006) 13 SCC 347.**

3. Mr. Sharma, learned Counsel for the Revenue submits that the petitioner did not co-operate during the assessment proceedings. The appellate authority has considered the said aspect while passing the order directing the petitioner to deposit 20% amount as pre-deposit. The non compliance during the course of assessment proceedings does not qualify the petitioner for non payment of 20% of the demand rates.

4. Mr. Shah, the learned Counsel submits that after the appeal was filed, the respondent has recovered some amount. The amount of refund that was entitled to has been adjusted by the Revenue in the demand claim in the assessment order, subject matter of the present petition.

5. As far as challenge to the assessment order is concerned, we are not inclined to exercise our writ jurisdiction under Article 226 of the

Constitution as the petitioner has already availed the remedy of appeal. The petitioner may prosecute its appeal before the appellate authority in accordance with law.

6. As far as the order of pre-deposit is concerned, the petitioner tried to contend and demonstrate that the petitioner was not given proper opportunity in as much as sufficient time was not given to the petitioner to place on record its say and the documents to be relied upon and the assessment order was passed in haste. Of course, it is the contention of the petitioner which the appellate authority will have to consider as per the record and the material placed before it.

7. It appears that the notice was issued to the petitioner on 15.12.2019. It is case of the petitioner that the same was received on 16.12.2019 and the information was to be furnished on 17.12.2019. The assessment order was passed on 22.12.2019.

8. Considering the aforesaid factual matrix of the case, we pass the following order.

9. The order of the appellate authority directing the petitioner to deposit 20% amount as pre-deposit is modified. The petitioner shall deposit 10% of its liability amount pursuant to the assessment as pre-deposit.

10. Writ Petition is accordingly disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] **[S. V. GANGAPURWALA, J.]**

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