

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2901/2020

(M/S ICAD SCHOOL OF LEARNING PVT. LTD., NAGPUR **VERSUS** UNION OF INDIA &
ANOTHER)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.V. Bhutada with Ms Pooja Daga, counsel for the petitioner.
Shri Santosh Singh Sokhi, Advocate h/f Shri U. Aurangabadkar, A.S.G.I. for the R-1.
Shri S.N. Bhattad, counsel for the R-2.
Shri A.M. Kadukar, A.G.P for the R-3.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATED : 23RD NOVEMBER, 2021.

The challenge raised in this writ petition is to the order dated 05.10.2020 passed by the Joint Commissioner, CGST & C.Ex., Nagpur-1.

The principal ground of challenge as raised is that the petitioner was not heard by the said Authority before passing the aforesaid order. In addition by amending the writ petition, the initial show cause notice dated 23.09.2019 has also been subjected to challenge.

The learned counsel for the respondent no.2 raises a preliminary objection to the tenability of the writ petition on the ground that statutory remedy of preferring an appeal before the Commissioner (Appeals) is available for being availed. Hence, this Court may not exercise discretion in favour of the petitioner by entertaining the writ petition.

Upon this preliminary objection, the learned counsel for the petitioner submits that without prejudice to its rights and contentions, an appeal has been preferred by the petitioner before the Commissioner (Appeals) on 07.12.2020. However, an apprehension is expressed that the binding precedents either of the High Court or of the Hon'ble Supreme Court are not likely to be taken into consideration by the said Authority while adjudicating the appeal. This apprehension is based upon the experience of the representative of the petitioner and hence it is submitted that the writ petition may be entertained on merits.

We find that during pendency of the writ petition, the petitioner has availed of the statutory remedy by filing an appeal before the Commissioner (Appeals). Though the said appeal has been filed without prejudice to the

grounds raised in the writ petition, we find that since the statutory remedy is available to the petitioner and the same has been now availed, there is no exceptional reason to bypass that remedy and entertain the writ petition. As regards the apprehension expressed by the learned counsel for the petitioner, we may only observe that it is open for the petitioner to place on record the decisions on which the petitioner seeks to rely before the Commissioner (Appeals). We hope and trust that the Commissioner (Appeals) would consider all material placed on record and decide the appeal on its own merits after giving opportunity to all the parties. The points raised in the writ petition are kept open. It is accordingly disposed of with liberty to the petitioner to pursue the statutory appeal filed before the Commissioner (Appeals).

The writ petition is disposed of.

(G.A. SANAP, J.)

(A. S. CHANDURKAR, J.)

APTE