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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-08-2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.18913 AND 18914 OF 2013

AND

M.P.NOS.1, 1, 2 AND 2 OF 2013

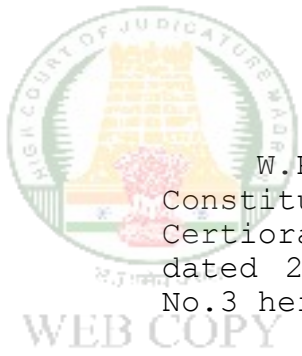
M/s.BMW India Pvt Ltd.,
1st Main Road, Off: 2nd Avenue,
Mahindra World City,
Natham Sub-Post,
Chengalpet - 603 002,
Represented by its Authorised Signatory,
Mr.Venkataraman Chandrasekar Babu.

... Petitioner in both WPs

.Vs.

1. The State of Tamil Nadu
Represented by its Secretary,
Ministry of Finance,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Joint Commissioner (CT)-I,
32(123) Dugar Towers,
Marshal Road,
Egmore,
Chennai - 600 008.
3. The Joint Commissioner (CT)-Appeals,
Commercial Taxes Annexe Building,
III Floor, Greams Road,
Chennai - 600 006.
4. The Deputy Commissioner (CT)-I,
32(123) Dugar Towers,
Marshal Road,
Egmore,
Chennai - 600 008.

... Respondents in both WPs



W.P.No.18913 of 2013 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records and quash the impugned order dated 24.05.2013 made in AP No.1 of 2013 passed by respondent No.3 herein for Assessment Year 2007-2008.

W.P.No.18914 of 2013 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records and quash the impugned notice dated 27.06.2013 made in CST/845546/2007-2008 passed by the respondent No.2 herein for Assessment Year 2007-2008 proposing the enhancement of the petitioner's taxable turnover for assessment under the Tamil Nadu Value Added Tax Act.

For Petitioner : Mr.Tarun Gulati,
in both WPs Senior Counsel
For Mr.R.Sandeep Bagmar

For Respondents 1 to 4 : Mr.V.Nanmaran,
in both WPs Government Advocate

C O M M O N O R D E R

W.P.No.18913 of 2013 is filed questioning the sustainability of the appellate order passed by the third respondent dated 24.05.2013 in AP No.1 of 2013.

2. W.P.No.18914 of 2013 is filed, calling for the records and quash the impugned notice dated 27.06.2013 made in CST/845546/2007-2008 passed by the respondent No.2 herein for Assessment Year 2007-2008 proposing the enhancement of the petitioner's taxable turnover for assessment under the Tamil Nadu Value Added Tax Act.

3. The petitioner is a Private Limited Company incorporated under the Companies Act, 1956.

4. The learned Senior Counsel, appearing on behalf of the petitioner, contended that the order impugned is in violation of the provisions of the Sales Tax Act, more specifically, Section 3 and further, the order was passed without providing an opportunity to the writ petitioner. Thus, it is a case of violation of the principles of natural justice and the orders impugned lacks jurisdiction and thus, the writ petitions are to be considered.

5. It is contended that the petitioner was not given notice of the intention of the third respondent to treat the entire turnover of sale involving dealers outside Tamil Nadu as local sales. Section 52(3) of the Tamil Nadu Value Added Tax Act,



stipulates that the appellant shall be given a reasonable opportunity of being heard.

6. Perusal of the orders would reveal that no such opportunity in relation to the proposed assessment was provided to the petitioner's turnover under the Tamil Nadu Value Added Tax Act, was ever given and the hearing was restricted to the levies confirmed under the Central Sales Tax Act by the fourth respondent. Thus, the orders impugned are unreasonable and in violation of the principles of natural justice.

7. Even the enhancement of turnover was made by the third respondent in the appeal without issuing any separate notice to the petitioner and by affording opportunity to establish their case. Even on that count, the writ petitions are to be considered.

8. The learned Senior Counsel, appearing on behalf of the petitioner, solicited the attention of this Court with reference to the findings made by the Appellate Authority and reiterated that the opportunity of being heard was denied and therefore, the impugned orders are liable to be set aside.

9. Regarding the order passed by this Court on 29.03.2021 in WP No.18071 of 2013 [M/s.Saint Gobain Glass India Ltd vs. The Appellate Joint Commissioner (CT) and another], the learned Senior Counsel, appearing on behalf of the petitioner, is of an opinion that the factual issues raised pertinently in these writ petitions may not have any straight application with reference to the findings in the abovesaid judgment and based on the abovesaid judgment, these writ petitions need not be considered.

10. In M/s.Saint Gobain Glass India Ltd's case (cited supra), this Court has upheld the actions of the respondents. However, in these writ petitions, the ground regarding violation of principles of natural justice and other factual grounds, are also raised.

11. The learned Government Advocate, appearing on behalf of the respondents, opposed the said contentions of the learned Senior Counsel appearing on behalf of the petitioner by stating that the issues raised by the petitioner are elaborately adjudicated by the Appellate Authority in the impugned orders. If at all the petitioner is aggrieved, it is for them to prefer an appeal before the Tribunal as contemplated under the provisions of the Act. Thus, these writ petitions are to be rejected.

12. When an appellate remedy is available to the petitioner under the provisions of the Act, the High Court need not



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adjudicate the disputed facts on merits. The Tamil Nadu Sales Tax Appellate Tribunal is empowered to adjudicate jurisdictional issues, factual disputes, legal grounds, including violation of principles of natural justice. Undoubtedly, the High Court may entertain a writ petition, if any direct violation of principles of natural justice has been established. However, if such violations are established in connection with certain disputed facts and circumstances, then it is preferable to direct the aggrieved person to approach the Competent Appellate Authority. In other words, the principles of violation of natural justice or incompetency of an authority directly hitting the provisions of the Statute may be entertained by the High Court. However, if those violations and jurisdictional aspects are raised in connection with certain factual aspects, then such factual aspects required an elaborate adjudication, which need not be undertaken by the High Court in the absence of examination of original documents and evidences.

13. The importance of appellate remedy is to be considered. The appellate remedy contemplated under the Statutes at no circumstances be undermined. The Tamil Nadu Sales Tax Appellate Tribunal consists of Expert Presiding Officers, who all are well versed in Taxation Laws. Undoubtedly, they are competent to decide both the factual as well as the legal issues raised between the parties. Thus, the High Court need not burden itself in respect of the writ petitions filed without exhausting the appellate remedy provided under the Statutes. In such circumstances, the very purpose and object of such appellate remedy gets defeated. Therefore, the petitioner in this regard is bound to prefer an appeal before the Tribunal. To reiterate, filing an appeal is the Rule, entertaining a writ petition is an exception. Only if the incompetency of an authority is established directly hitting the provisions of the Act, then alone, the writ may be entertained and in all other circumstances, the aggrieved persons must be allowed to exhaust the appellate remedy, which is a valuable opportunity. An aggrieved person need not be deprived of such an opportunity of appeal unnecessarily, as the grievances may be redressed effectively even before the Sales Tax Appellate Tribunals.

14. The importance of the appellate remedy and the legislative intention in this regard and dispensing with the appellate remedy as contemplated are considered by this Court elaborately in the case of Sri Sathya Jewellery vs. Principal Commissioner of Customs [CDJ 2021 MHC 1799] and the relevant paragraphs 11 to 18 are extracted hereunder:-

"11. This Court is of the considered opinion that all such grounds raised on merits are to be adjudicated with reference to the documents and evidences to be produced and the scope of the



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writ petition under Article 226 of the Constitution of India cannot be expanded so as to exercise the powers of the appellate authority in the matter of examination or scrutiny of original documents and evidences produced by the respective parties. The very purpose of the statutory appeal is to scrutinize the orders passed by the original authorities, and therefore, the legislative intention in this regard is to be scrupulously followed in the matter of adjudication of merits with reference to the documents and evidences.

12. In common parlance, Statutes contain appeal provisions. In some of the Statutes, there are two-tier appeal provisions in order to ensure that the facts, grounds, evidences are appreciated and the grievances are redressed in the manner known to law. Such appeal provisions are provided with the legislative intention to provide remedy to the aggrieved persons. The High Court, in normal circumstances, would not interfere nor dispense with the appellate remedy.

13. The High Court cannot adjudicate the facts and merits with reference to documents and evidences. Trial is not entertainable under Article 226 of the Constitution of India. All such procedural aspects are to be followed by complete adjudication/trial by the original authorities as well as by the appellate authorities under the provisions of the Statute and the powers under Article 226 of the Constitution of India is limited to find out whether the processes contemplated under the Statutes and the procedural aspects are followed by the competent authorities as well as the appellate authorities or not. The High Court, under Article 226 of the Constitution of India, is not expected to usurp the powers of the appellate authorities by adjudicating the merits of the matter on certain documents and evidences. In the event of adjudication of merits under Article 226 of the Constitution of India in the absence of complete trial with reference to the documents and evidences, there is a possibility of miscarriage of justice, and therefore, the High Court is expected to be cautious, while entering into the venture of adjudication of certain merits with reference to the original



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documents and evidences produced by the respective parties to the lis. This being the legislative intention, High Court is expected to trust the institutional authorities as well as the hierarchy of institutions contemplated under the Statutes. Institutional respects are of paramount importance for providing complete justice to the parties and the various stages of adjudication are important for the purpose of correcting omissions, commissions, errors in appreciation of evidence, etc. Powers of the High Court under Article 226 of the Constitution of India cannot be extended nor widened so as to allow lay hands on the facts and circumstances by conducting the trial, nor certain facts and circumstances with reference to documents and evidences can be assumed or presumed or inference can be drawn, which is not preferable.

14.This Court elaborately discussed the importance of exhausting the appellate remedy in the case of M/s.Hyundai Motor India Limited v. The Deputy Commissioner of Income Tax, Chennai and another [W.P.No.22508 of 2017 dated 16.07.2018], from which, the following paragraphs are extracted :

"19.Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures



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contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014

If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

- (1) The supremacy of the Constitution.
- (2) Republican and Democratic form of government and sovereignty of the country.
- (3) Secular and federal character of the Constitution.
- (4) Demarcation of power between the Legislature, the executive and the judiciary.
- (5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
- (6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973: (1973) 4 SCC 225].



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That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even in the absence of express



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provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs--legislature, executive and judiciary--is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned.

In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.



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(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law."

20. This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

21. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22. When an effective alternative remedy is available, a writ petition cannot be maintained



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1. In City and Industrial Development Corporation v. DosuAardeshirBhiwandiwala and Ors. MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. KanaiyalalLalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.; Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

3. Commissioner of Income Tax and Ors. v. Chhabildass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the



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provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) : MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on United Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.



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5. State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms

Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089,

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. 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



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not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

15. As far as the judgment of the Hon'ble Supreme Court of India in the case of M/s. Canon India Private Limited (supra) is concerned, as rightly pointed out by the learned Senior Standing Counsels appearing on behalf of the respondents that the matter went to the Hon'ble Apex Court by way of regular appeal and the Hon'ble Supreme Court of India, while adjudicating the final orders passed by the Appellate Tribunal, formed an opinion that the issuance of show cause notice itself was by an improper authority. Thus, by citing the said finding, the appellate remedy otherwise provided under the Statute cannot be dispensed with, and in the event of accepting the said contention, in all such cases, every litigant will approach the High Court by way of writ petition bypassing the appellate remedy, which is not desirable and cannot be accepted. As observed earlier, Institutional respect is of paramount importance. Even the point of jurisdiction, limitation, error apparent on the face of the record, are on merits and all are to be adjudicated before the appellate authority and the appellate authority, more specifically, the Appellate Tribunal or the Commissioner (Appeals), as the case may be, is empowered to adjudicate all such legal grounds



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raised by the respective parties and make a finding on merits. Thus, usurping the powers of the appellate authorities by the High Court by invoking its powers under Article 226 of the Constitution of India is certainly unwarranted. The parties must be provided an opportunity to approach the appropriate authorities for redressal of their grievances in the manner known to law. In the event of entertaining all such writ petitions, the High Court will not only be over-burdened, but usurping the powers of the appellate authority is certainly not desirable.

16. Jurisdictional error should not result in exoneration of liability. Jurisdictional error, if any committed, is technical, and thus, rectifiable. In such circumstances, the Courts are expected to quash the order passed by an incompetent authority and remand the matter back for fresh adjudication. Contrarily, if an assessee is exonerated from liability, undoubtedly, the purpose and object of the Act is defeated.

17. The growing practice in the High Court is to file writ petitions under Article 226 of the Constitution of India without exhausting the statutory remedies provided under the Act. The point raised in this regard are statutory violations. However, even such statutory violations can be dealt with by the Appellate authorities or the Appellate Tribunals. This apart, in a writ petition, if such orders passed with jurisdictional errors and quashed without any remand, then an injustice would be caused to the very spirit of the Statute enacted for the benefit of the public at large. Thus, Courts are expected to be cautious, while granting exoneration of liability merely on the ground of jurisdictional errors, if any committed by the authorities competent. On some occasions, jurisdictional errors are committed wantonly or in collusion with the assessees, knowingly that there is a possibility of escaping from the clutches of law. Thus, the higher authorities of the Department are expected to be watchful and review the orders passed by the Subordinate authorities and in the event of any negligence, dereliction of duty, collusion or corrupt activities, then such officials are liable to be



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prosecuted apart from initiation of departmental disciplinary proceedings. The procedures to be followed in the department for assessment is well settled. Thus, the authorities competent are not expected to commit such jurisdictional errors in a routine manner. In these circumstances, review of such orders by the higher authorities are imminent to form an opinion that there is any willful or intentional act for commission of such jurisdictional errors, enabling the assessee to get exonerated from the liability. Liability and jurisdictional errors are distinct factors, and therefore, Courts are expected to provide an opportunity to the Department to decide the liability on merits and in accordance with law with reference to the provisions of the Act and Rules and guidelines issued by the Department.

18. Large number of writ petitions are filed without exhausting the statutory appeal remedies and High Court is also entertaining such writ petitions in a routine manner. Keeping such writ petitions pending for long time would cause prejudice to the interest of the assessee also. Thus, such statutory provisions regarding the appeal are to be decided at the first instance, enabling the litigants to avail the remedy by following the procedures as contemplated under law. Such writ petitions are filed may be on the ground of jurisdiction or otherwise. However, the Courts are expected to ensure that all such legal grounds available to the parties are adjudicated before the proper Forum and only after exhausting the statutory remedies, writ petitions are to be entertained. In the absence of exhausting such remedies, High Court is losing the benefit of deciding the matter on merits as the High Court cannot conduct a trial or examine the original records in the writ proceedings under Article 226 of the Constitution of India. Thus, the Courts shall not provide an unnecessary opportunity to the assessee to escape from the liability merely on the ground on jurisdictional error, which is rectifiable."

15. The power of judicial review under Article 226 of the Constitution of India is to ensure that the processes through which a decision is taken by the Competent Authority in consonance with the provisions of the Act, but not the decision itself. This being the principles to be adopted while



entertaining a writ petition, this Court is of the considered opinion that the factual disputes now raised, including the legal grounds are to be adjudicated before the Tribunal in these writ petitions.

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16. The learned Senior Counsel, appearing on behalf of the petitioner, contended that the writ petitions were admitted in the year 2013 and are pending for about 7 years and therefore, the petitioner need not be relegated again before the Appellate Authority. This Court is of the considered opinion that this practice of admitting the writ petition and keeping the same pending is unavoidable and at one point, the High Court has to settle the principles in the matter of exhausting the appellate remedy. If such practices are allowed, then every litigant will take advantage of such circumstances or efflux of time.

17. The consistency and uniformity in exercising the appeal remedy before approaching the High Court is to be developed both in the interest of the aggrieved person as well as in the interest of the institutions. Institutional respects are also to be protected by the High Court. Thus, this Court is of an opinion that mere pendency cannot be a ground for preferring an appeal and the High Court in such circumstances may take a lenient view by condoning the delay in preferring an appeal, if any arises. This being the principles to be considered, this Court is of an opinion that the petitioner has to approach the Tribunal in order to adjudicate the disputed facts as well as the legal grounds raised in these writ petitions.

18. Accordingly, the petitioner is at liberty to prefer an appeal before the Jurisdictional Appellate Authority in the prescribed format and by complying with the provisions of the Act and the Rules, within a period of 60 days from the date of receipt of a copy of this order. The Appellate Authority, in the event of receiving any appeal from the petitioner, shall consider the same on merits and in accordance with law and by affording an opportunity to the writ petitioner and dispose of the appeal as expeditiously as possible.

19. With the above directions, the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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