IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WP.NOS.25475 TO 25478 OF 2010
AND
M.P.NOS.1 TO 1 OF 2010

WP.Nos.25475 TO 25478 OF 2010

M/s.Conybio Healthcare (India) Pvt. Ltd., Rep. By its Director M.S.Nassim,
No.96, Jawaharlal Nehru Salai,
Ekkattuthangal, Chennai - 97. .. Petitioner in all WPs.

Vs

1. The Assistant Commissioner (C.T.),
Vadapalani I Assessment Circle,
10-C, Razaak Garden, MMDA Colony, Arumbakkam,
Chennai - 600 105.

2. The Commissioner of Customs,
(Airport and Air Cargo complex),
Meenambakkam, Chennai - 27.
.. Respondents in all WPs.

[R2 impleaded as per order dated 03.12.2010 by CVJ in MP.Nos.2 of 2010 in WP Nos.25475 to 25478 of 2010].

COMMON PRAYER: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of the respondent in his proceedings TNGST/1461665/2000-01, TNGST/1461665/2001-02, TNGST/1461665/2002-03 and TNGST/1461665/2003-04, dated 30.08.2010 and quash the same as illegal.

For Petitioner in all WPs : Mr.B.Sathish Sundar
for Dr.S.Krishnanandh
Change of vakalat given
vide SR.No.33156 dt. 13.9.2021

For Respondents in all WPs. : Mr.V.Nanmaran (for R1)
Government Advocate
Mr.V.Sundareswaran (for R2)
Sr. Panel Counsel for Customs.

COMMON ORDER

The petitioners are dealers in Health Care Products. The petitioners are importing Far infra Red (FIR) Bio Ceramic Healthcare products such as T.Shirts, Socks, Waist Belt, Knee bands, ankle bands, beads, food containers etc., and marketing through the distributors. The petitioners are assessees on the file of the 1st respondent. The petitioners were finally assessed to tax at a total of Rs.6,32,36,976/-, Rs.18,59,47,825/- Rs.21,38,46,910/- and Rs.6,88,78,656/- & Rs.6,87,00,808/- for the Assessment years 2000-01, 2001-02, 2002-03 and 2003-14 respectively, under Tamil Nadu Goods and Service Tax Act.

2. Perusal of the orders impugned would reveal that the Assistant Commissioner/1st respondent passed orders in proceedings dated 30.08.2010. Against the said orders passed by the Assistant Commissioner, an appeal is contemplated under Section 31 of the Tamil Nadu Goods and Service Tax Act to the Appellate Assistant Commissioner.

3. Instead of preferring an appeal, the petitioner has chosen to file the present writ petition raising factual and legal grounds. The appellate authority is the final fact finding authority and competent to adjudicate the mixed question of fact and law. The importance of adjudication of disputed facts before the appellate authority, at no circumstances be undermined. This apart, the valuable right of appeal provided to an aggrieved person under the statute, need not be taken away in a routine manner.

4. Thus, this Court is of the considered opinion that filing of an appeal is the rule. Entertaining a writ petition is only an exception. If the writ petition is filed on the ground that the authority who issued the order impugned is incompetent or having no jurisdiction under the provisions of the Act in a direct manner or when allegation of malafides are raised, then alone the writ petition needs to be entertained and in all other circumstances, the aggrieved person is bound to prefer an appeal as provided under the statute.

5. Undoubtedly, writ proceedings may be entertained before exhausting the appellate remedy. However, it is to be ensured that there is an imminent threat or gross injustice warranting urgent relief to be granted. Mere violation of principles of natural justice is insufficient to entertain a writ proceedings under Article 226 of the Constitution of India, as every Writ Petition is filed based on one or the other ground stating that the principles of natural justice is violated or statutory requirements are not complied with or there is an illegality or otherwise. Thus, dispensing with an appellate remedy is to be

granted cautiously in view of the fact that the very purpose and object of legislation providing an appellate remedy cannot be diluted nor the benefit be denied to the aggrieved person to exhaust the same. The statutory appellate authorities are the final fact finding authorities. Thus, the finding to be made by such appellate authorities with reference to the documents and evidences are of paramount importance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India.

6. The power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinize the processes through which a decision is taken by the competent authority by following the procedures as contemplated, but not the decision itself. Therefore, the routine entertainment of a Writ Petition by dispensing with appellate remedy is not preferable and such an exercise would cause injury to the institutional hierarchy and the importance attached to such appellate institutions. The appellate institutions provided under the statute at no circumstances be undermined by the higher Courts. The appellate forums are the final fact finding authorities and more so, possessing expertise in a particular field. Thus, the finding of such appellate forums would be a valuable assistance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India. The High Court cannot conduct a roving enquiry with reference to the facts and circumstances based on the documents and evidences. Based on the mere affidavits filed by the litigants, the disputed facts cannot be concluded. Thus, the importance of fact finding by the appellate forums is of more value for the purpose of providing complete justice to the parties approaching the Court of law.

7. In the case on hand, the impugned orders were passed by the Assistant Commissioner. However, in respect of the Assistant Commissioner contemplated under Section 31 of the Act, a notification was issued by the Government redesignating the post of Assistant Commissioner as Deputy Assistant Commissioner, now the Appellate Deputy Commissioner is exercising the appellate power under Section 31 of the Act.

8. Admittedly, the Appellate Deputy Commissioner is in the rank of Joint Commissioner of Commercial Taxes. Therefore, the petitioner is bound to prefer an appeal before the Appellate Deputy Commissioner under Section 31 of the Act.

9. In view of the facts and circumstances, the petitioner is at liberty to prefer appeals against the orders impugned passed by the 1st respondent within a period of 30 days from the date of receipt of a copy of this order in the prescribed format and by

complying with the provisions as contemplated under the Act.

10. In the event of filing of any such appeals by the petitioner, the Appellate Deputy Commissioner shall entertain the appeals taking into consideration the pendency of the writ petitions before this Court and and adjudicate the appeals on merits, in accordance with law and pass final orders, by affording opportunity to the writ petitioner, as expeditiously as possible.

11. With these directions, the writ petitions stand disposed of. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (C.T.),
Vadapalani I Assessment Circle,
10-C, Razaak Garden,
MMDA Colony, Arumbakkam,
Chennai – 600 105.

2. The Commissioner of Customs,
(Airport and Air Cargo complex),
Meenambakkam, Chennai – 27.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.47066
+1cc to Mr.B.Sathish Sundar, Advocate, S.R.No.47577
+1cc to Special Government Pleader (T), S.R.No.47641

WP.Nos.25475 to 25478 of 2010

SRA(CO)
CS/28/10/2021