IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-08-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.23572 of 2016
And
WMP No.20194 of 2016

Shri P.Manoharan

.. Petitioner

vs.

1.The Additional Commissioner of Service Tax,
No.2054, Newry Towers,
Second Avenue,
12th Main Road,
Anna Nagar,
Chennai-600 040.

2.The Commissioner of Service Tax,
No.2054, Newry Towers,
Second Avenue,
12th Main Road,
Anna Nagar,
Chennai-600 040.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in the impugned order-in-original No.178/2015-16-ST-II dated 31.03.2016 quash the same as the same is contrary to the law laid down by the Supreme Court in the case of Kamalakshi Finance Corporation Limited [(1991) 55 ELT 433 and direct the first respondent to follow the order of the First Appellate Authority in order-in-appeal No.327 to 336/2013 (M-ST) dated 20.11.2013 passed on identical circumstances in the petitioner's own case.

For Petitioner	:	Mr.Yeswanthran for Mr.K.Vaitheeswaran.
For Respondents	:	Mr.A.P.Srinivas, Senior Standing Counsel.

O R D E R

The order in original dated 31.03.2016, passed by the first respondent, is under challenge in the present writ petition.

2. The preamble of the order impugned would show that "the appeal shall be filed in the prescribed form, in quadruplicate within sixty days from the date of its communication to the person whom it is addressed. The appeal should bear a Court Fee Stamp of Rs.4/-". There is a procedure for filing the appeal is also enumerated in the preamble to the order impugned.

3. The writ petitioner instead of preferring an appeal, has chosen to file the present writ petition stating that the First Appellate Authority has considered the issue on merits and passed a detailed order, setting aside the demand of service tax on construction of quarters for the Police personnel based on the contract awarded by the Tamil Nadu Police Housing Corporation Limited.

4. In view of the finding that the earlier order passed by the Original Authority was set aside and the matter was remanded back, the writ petitioner need not again prefer an appeal. However, the fact remains that the matter was remanded and the Original Authority has adjudicated the issues on merits and made findings.

5. Perusal of the affidavit filed by the writ petitioner would clearly show that adjudication of facts with reference to the documents and evidences are required to be undertaken. Such an exercise cannot be done by the High Court in the writ proceedings under Article 226 of the Constitution of India. Even in case of mixed question of facts and law, the Appellate Authority is empowered to adjudicate the same.

6. The Appellate Authority and the Appellate Tribunal are the Quasi Judicial Authorities and therefore, they are bound to adjudicate both factually as well as the legal grounds for the purpose of resolving the dispute between the parties.

7. Contrarily, the valuable right of an appeal to the aggrieved person need not be taken away by unnecessarily dispensing with the alternate remedy, wherein the facts are required to be adjudicated. Thus, the writ petitioner has to prefer an appeal for effective adjudication of the disputed issues and to redress his grievances in the manner known to law.

8. Preferring an appeal is the rule. Entertaining a Writ Petition before exhausting the appellate remedy is an exception. 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.

9. 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.

10. The point of delay may be an acceptable ground for the purpose of entertaining a Writ Petition. The practise of filing the Writ Petition without exhausting the statutory remedies are in ascending mode and such Writ Petitions are filed with a view to avoid pre-deposits to be made in statutory appeals and on the ground that the appellate remedies are time consuming.

11. 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, within a period of four weeks 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.

12. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Additional Commissioner of Service Tax,
No.2054, Newry Towers,
Second Avenue,
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Chennai-600 040.

2.The Commissioner of Service Tax,
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Anna Nagar,
Chennai-600 040.

+1cc to Mr.K.Vaitheeswaran, Advocate Sr No.39003
+1cc to Mr.A.P.Srinivas, Advocate Sr No.39514

WP 23572 of 2016

GPL (CO)
PR (26/08/2021)