IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-07-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.9202 of 2015
And
MP No.1 of 2015

Kansai Nerolac Paints Ltd.,
142, Thiruporur High Road,
Perungudi,
Chennai-600 096. ...Petitioner

Vs.

1. Commissioner of Central Excise,
Chennai – IV Commissionerate,
M.H.U. Complex,
No.692, Anna Salai,
Nandanam,
Chennai-600 035.

2. Assistant Commissioner of Central Excise,
Perungudi Division,
4th Floor,
E.V.R. Periyar Building,
Anna Salai,
Nandanam,
Chennai-600 035. ...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the first respondent herein in order-in-original No.3/2015 dated 09.03.2015 and quash the same.

For Petitioner : No Appearance

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel.

O R D E R

The writ on hand is filed challenging the order-in-original No.3/2015 dated 09.03.2015.

2. The petitioner-Company is the manufacturer of paints at various locations in India, including one at Perungudi, Chennai and they are paying Central Excise Duty on their products.

3. On perusal of the affidavit filed in support of the writ petition as well as the grounds raised, this Court is of the opinion that all relatable to the facts, which all are to be adjudicated with reference to the documents and the evidences.

4. Mixed question of law and facts are to be adjudicated at the first instance before the Appellate Authority by the petitioner and this Court cannot conduct roving enquiry in respect of such disputed facts.

5. 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.

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. 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.

8. In the introductory paragraph of the impugned order-in-original dated 09.03.2015, it is categorically stated that "any person deeming himself aggrieved by this order may appeal against the same to the Customs, Excise and Service Tax Appellate Tribunal at Shastri Bhavan, Haddows Road, Chennai-600 006". The procedure for appeal is also enumerated in the impugned order itself.

9. The learned Senior Standing Counsel appearing on behalf of the respondents also contended that the appeal lies under Section 35-B of the Central Excise Act, 1944. Therefore, the petitioner is bound to prefer an appeal to redress his grievance. The importance of the appellate remedy contemplated under the Statute at no circumstances be undermined by the Courts.

10. The Appellate Authority, being the Final Fact Finding Authority and those findings and facts of law would be of greater assistance for the High Court in exercise of its powers of judicial review under Article 226 of the Constitution of India. Thus, the petitioner is bound to prefer an appeal for the purpose of redressing his grievance.

11. Accordingly, the petitioner is at liberty to prefer an appeal 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 VII)

//True Copy//

Sub Assistant Registrar

Svn

To

1. Commissioner of Central Excise,
   Chennai - IV Commissionerate,
   M.H.U. Complex, No.692, Anna Salai,
   Nandanam,
   Chennai-600 035.

2. Assistant Commissioner of Central Excise,
   Perungudi Division,
   4th Floor,
   E.V.R. Periyar Building,
   Anna Salai,
   Nandanam, Chennai-600 035.

+1 CC to Mr.A.P.Srinivas, Advocate, Sr 35028.

WP No.9202 of 2015

CA(CO)
LS(03/09/2021)