

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

CORAM

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

W.P.No.2293 of 2018

and

W.M.P.No.2801 of 2018

Mahaveer Foods & Beverages,
Rep.by its Proprietor,
No.44, Ramanathan Street,
Ayanavaram,
Chennai - 600 023.

..Petitioner

vs

1.The Principal Commissioner of GST
& Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2.The Head,
Central Food Technological Research Institute,
CFTRI Campus,
Mysuru-570020.

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
call for the entire records relating to C.No.V/15/34/2017-
Ch.NAdj./Order-in-Original No.26-27/2017 (Commr.) dated
29.11.2017 passed by the first respondent and quash the same.

For Petitioner : Mr.J.Shankarraman

For Respondents : M/s.Hemamuralikrishnan
Senior Panel counsel
[For R1]

No appearance - R2

WEB COPY

O R D E R

The order-in-original in proceedings dated 29.11.2017 passed
by the first respondent is under challenge in the present writ
petition.

2. The petitioner states that it is a proprietorship concern
and procures Tea from registered tea suppliers, Herbs & Spices

from dealers in powder form and permitted food colours. All the said items are mixed together and made as a product, which is called as "Herbal Sherbat Granules". It is only a flavoured tea and not a ready to drink or instant tea item. It contained around 90% of Tea.

3. In response to the show cause notice dated 05.11.2015, seeking to classify the above product under subheading No.2101 2090, the petitioner submitted objections and the 1st respondent considered and pass orders in proceedings dated 29.11.2017, which is under challenge in the present writ petition.

4. The learned counsel appearing on behalf of the writ petitioner mainly contended that it is a fit case for remanding the matter back to the first respondent for fresh adjudication. The first respondent has not considered the grounds mainly raised by the petitioners. The judgments relied on by the petitioners were also not considered. This apart, the Central Food Technological Research Institute, Mysuru, had not at all received the sample products and in the absence of sample products, the results cannot be declared and based on certain presumptions and assumptions, the first respondent proceeded and passed the impugned order and therefore, the impugned order is liable to be set aside.

5. The learned counsel for the petitioner reiterated that no samples were collected nor any report has been given. In the absence of any such report from the Central Food Technological Research Institute, the 1st respondent ought not to have formed an opinion regarding the products manufactured by the petitioner, more specifically, which is to be considered only as tea and appropriately classified. However, the 1st respondent, in the absence of any such research report from the Research Institute, formed an opinion and passed orders without considering the grounds as well as the objections raised by the petitioner.

6. The petitioner has stated that the 1st respondent all along informed that the samples were sent to the Central Food Technological Research Institute, Mysuru, and in an application submitted by the petitioner under the Right to Information Act, a reply was furnished on 27.07.2017, wherein there is an indication that "No samples were received". Further, it is stated that the analysis were not performed in the absence of any samples and without conducting any analysis of the samples, the 1st respondent decided the issues, which is improper and thus, the impugned order is to be set aside and the matter to be remanded back.

7. The learned Senior Standing counsel appearing on behalf of the respondent solicited the attention of this Court with reference to the order passed by the Central Food Technological Research Institute in proceedings dated 24.09.2015, which states that the payment for analysis is to be paid by the Commissioner of Central Excise. The details regarding the products collected from the petitioner also has been elaborated. In response to the said letter, the Deputy Commissioner office of the Commissioner of Central Excise sent a reply on 05.10.2015 to the Director, Central Food Technological Research Institute, CFTRI Campus, Mysuru, requesting the research institute to intimate the charges for testing the products regarding only the nature and composition of ingredients of the subject samples for taxation purposes. As huge revenue is involved in this issue, an early response is solicited.

8. In this regard, the Central Food Technological Research Institute, Mysuru, sent a reply in proceedings dated 27.10.2005, stating that "We do not have tests to identify nature and composition of ingredients". Thereafter, the 1st respondent proceeded to consider the nature of the products with reference to available materials on record and passed an order, considering the objections filed by the petitioner.

9. The learned Senior Standing counsel relied on the impugned order has stated that the contentions of the petitioners were considered by the 1st respondent and an elaborate order was passed on merits and in accordance with law. Thus, the petitioner has to prefer an appeal before the Appellate Tribunal as contemplated under the Customs Act.

10. Admittedly, the petitioner has not exhausted the appeal remedy provided under the Act. The learned counsel for the petitioner made a submission that in view of the fact that the 1st respondent has not adjudicated the vital grounds, the matter is to be remanded back. Question arises in such circumstances, an order of remand may be passed or not by the High Court in a writ proceedings under Article 226 of the Constitution of India.

11. Undoubtedly, the High Court may pass an order of remand in the event of non-consideration of certain vital issues raised by the parties concerned. However, if an efficacious Appellate Remedy is available before the Appellate Tribunal, then the High Court need not go into those facts unnecessarily and the institutional respects are to be maintained and the statutory appeals are to be exhausted in all circumstances. The Tribunal has got powers to adjudicate all the factual as well as the legal grounds raised by the respective parties. More so, the Tribunal is empowered to consider the merits with reference to

the documents as well as the evidences. Such an exercise cannot be done by the High Court under Article 226 of the Constitution of India. The order impugned is passed by the 1st respondent, who is the original authority in the present case. Thus, the petitioner has to avail the further opportunity of appeal for effective adjudication of the issues with reference to the original documents and evidences, which all are relied on by the parties concerned. Bypassing the Appellate Remedy is not preferable in such circumstances, in view of the fact that in the event of any finding in a writ proceedings, the same may cause prejudice to either of the parties. Thus, the High Court is not empowered to venture into the adjudication of certain intricacies in the facts and circumstances, which is to be done in the case with reference to the nature of products and other technical aspects.

12. This being the factum, this Court is of the opinion that exhausting of an appeal remedy under the Customs Act is of paramount importance for effective adjudication of the issues with reference to the original documents and evidences produced by the respective parties to the lis.

13. In this regard, the principles are considered by this Court in W.P.No.3144 of 2016 & etc., batch dated 15.04.2021 and the relevant paragraphs are extracted hereunder:

"7. In order to avoid the Pre-Deposit, which is contemplated under the Statute, the practice of filing writ petitions is prevailing in the High Court and the High Court cannot encourage such practice and the appellate remedy contemplated under the Act is to be exhausted in all circumstances and only under extraordinary circumstances, in order to mitigate injustice, the High Court can intervene and not otherwise. Such power of dispensing with the appeal remedy is to be exercised sparingly and not in a routine manner. The learned Senior Standing Counsels reiterated that, in respect of the writ petitions on hand, the original assessment order has been passed either by the Joint Commissioner or by the Commissioner of Customs. Against such original orders passed by the original authorities under the provisions of the Customs Act, an appeal is contemplated under Sections 128 and 129 of the Customs Act, respectively. Without exhausting the appellate remedy, the writ petitioners have filed these writ petitions, and therefore, the writ petitions are liable to be dismissed.

8. With reference to the appellate remedy, the Hon'ble Division Bench of this Court in W.A.No.640 of 2021 [M/s.Fourcess Diamond Pvt. Ltd. and another v.

The Joint Commissioner of Customs (Air Cargo), Meenambakkam, Chennai] delivered a judgment on 25.02.2021 and the relevant paragraphs are extracted hereunder :

"8.After elaborately hearing the learned counsel for the appellants and the learned Senior Standing Counsel appearing for the respondent, we are of the view that the issues raised in the writ petition are not purely questions of law, but mixed questions of fact, which would require a process of adjudication. Such matters cannot be decided by a Writ Court based on affidavits. Therefore, we do agree with the ultimate conclusion of the learned Writ Court that the appellant should avail the alternate remedy available under the Act.

9.For the reasons, which we have assigned in the preceding paragraph, the Writ Appeal stands dismissed and the appellants are granted 60 days time from the date of receipt of a copy of this judgment to file an appeal before the Commissioner of Customs (Appeals) and if the same is filed, the Commissioner of Customs (Appeals) shall entertain the appeal, without reference to the limitation as the writ petition was filed before this Court in the year 2016, which is well within the period of limitation, had the appellants filed appeals before the Commissioner of Customs (Appeals) at the relevant point of time.

10.Since the learned counsel for the appellants submitted that the certified copy of the impugned order was filed in the writ petition, the Registry is directed to return the impugned original order filed in the writ petition, after retaining a photostat copy. No costs. Consequently, connected miscellaneous petition is closed."

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 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 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].

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 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.

(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. 1. In *City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla 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. Kanaiyalal Lalchand 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. Chhabil Dass 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 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.

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 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 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 overburdened, 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 assessee, 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 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 loosing 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."

14. This being the factum established, this Court has no

hesitation in arriving a conclusion that the petitioners are bound to exhaust the Appellate Remedy as contemplated under Section 35-B of the Central Excise Act, 1944. The petitioners are at liberty to approach the Appellate Authority by filing an appeal in a prescribed form and by complying with the provisions of the Act. The petitioner is also at liberty to file such an appeal before the Appellate Tribunal within a period of 30 days from the date of receipt of a copy of this order and in the event of filing any such appeal, the Appellate Tribunal shall adjudicate the matter on merits and in accordance with law by affording opportunity to all the parties concerned.

15. With this liberty, the writ petition in W.P.No.2293 of 2018 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Kak
To

1.The Principal Commissioner of GST
& Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2.The Head,
Central Food Technological Research Institute,
CFTRI Campus,
Mysuru-570020.

+lcc to Mr.J.Shankarraman, Advocate SR.No. 26549

+lcc to Mr.M/s.Hemamuralikrishnan , Advocate SR.No. 26695

+lcc to Mr.T.Ravi Kumar, Advocate SR.No. 28524

W.P.No.2293 of 2018

AJS(CO)

A.SK(07.07.2021)