IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12033 of 2014
and
M.P. No.1 of 2014

M/s. Sea Queen Shipping Services (P) Ltd.
No.1, "Kapali", Arunachalapuram 2nd Street,
Adayar, Chennai 600 020 ...Petitioner

Vs.

1. The Union of India
Rep. by its Secretary to Government,
Ministry of Finance,
New Delhi 110 001.

2. The Commissioner Service Tax
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai 600 040.

3. The Assistant Commissioner,
Tech/Designated Authority, Service Tax,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai 600 040.

4. The Assistant Commissioner,
Service Tax, I Division,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai 600 040. ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of certiorarified Mandamus calling for the records relating to the third respondent in its proceeding No.C.No.IV/16/905/2013-STC-Tech VCES/Chennai-STC/695 dated 29.03.2014 based on the circular issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, Tax Research Unit, dated 08.08.2013 in Circular No.170/5/2013-ST, New Delhi and also not in consonance with circular dated 30.12.2013 issued by Controller of General Accounts, Ministry of Finance, New Delhi for payment of Service Tax under the VCES Scheme 2013 and quash the same and consequently direct the 2nd respondent to grant the benefit of the payment of Service Tax for the Assessment period April 2010 to December 2012 under the VCES (Scheme) to the petitioner company by considering the payment of Rs.4,98,675/- by way of three demand drafts dated 31.12.2013 and 20.01.2014 for Rs.4,98,675/-.

For Petitioner : Mr.T.R. Sundaram

For Respondents : Ms. Hema Murali Krishnan
Senior Standing Counsel.

ORDER

This Writ Petition is filed challenging the order in original passed by the Commissioner of Service Tax on 29.03.2014.

2. The petitioner has raised several grounds on merits as well the legal grounds. However, it is the admitted fact that the appellate remedy is contemplated. In view of the matter, the petitioner has to approach the Tribunal for the purpose of redressal to his grievances. The importance of exhausting the appellate remedy has been elaborately considered by this Court in number of cases.

3. 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.

4. 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.

5.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.

6. In view of the above facts and circumstances, the petitioner is at liberty to prefer an appeal in the prescribed format by complying with the provisions of the Act, within four(4) weeks from the date of receipt of a copy of this order. In the event of filing any such appeal by the petitioner, the Tribunal shall consider the same and dispose of the appeal on merits and in accordance with law as early as possible.

7. With these observations, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government Union of India
   Ministry of Finance
   New Delhi 110 001

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+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.36433

W.P.No.12033 of 2014

RLD(CO)
SB(26/08/2021)