



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

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CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.12321, 12322 & 12324 of 2014
and M.P.Nos.1, 1 & 1 of 2014

M.Ravichandran ..Petitioner in W.P.No.12321/2014
N.Selvarasu ..Petitioner in W.P.No.12322/2014
S.Sivakumar ..Petitioner in W.P.No.12324/2014

Vs.

1.The Assistant Commissioner of Central Excise,
1, Vallalar Nagar, Manjakuppam,
Cuddalore 607 001.

2.The Chief General Manager (Finance)
Corporate Office, Neyveli Lignite Corporation,
Neyveli. ..Respondents 1 & 2 in
W.P.No.12321, 12322/2014
and Respondents 2 and 3 in
W.P.No.12324/2014

The Additional Commissioner of Central Excise
Goubert Avenue (Beach Road) Puducherry

..1st Respondent in W.P.No.12324/2014

Prayer in W.P.No.12321/2014: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order in Original No.67/2010-ST dated 07.04.2010 passed by the 1st respondent and the consequential Notice of demand issued under Sec.87(b)(i) of the Finance Act, 1994 in C.No.V/16/42/09-ST dated 10.03.2014 and quash the same as illegal, arbitrary, unreasonable and without authority of law and further direct the 1st respondent to pass orders afresh after proper verification of the payments made by the petitioner along with the challans and on merits in accordance with law.

Prayer in W.P.No.12322/2014: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the



order in Original No.27/2011-ST dated 08.11.2011 passed by the 1st respondent and the consequential Notice of demand issued under Sec.87(b) (i) of the Finance Act, 1994 in C.No.IV/16/STC/331/2009-ADJ dated 07.03.2014 and quash the same as illegal, arbitrary, unreasonable and without authority of law and further direct the 1st respondent to pass orders afresh after proper verification of the payments made by the petitioner along with the challans and on merits in accordance with law.

Prayer in W.P.No.12324/2014: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order in Original No.16/2010-ADJ dated 11.01.2010 passed by the 1st respondent and the consequential Notice of demand issued under Sec.87(b) (i) of the Finance Act, 1994 in C.No.IV/16/STC/182/2010-ST dated 07.03.2014 by the 2nd respondent and quash the same as illegal, arbitrary, unreasonable and without authority of law and further direct the 1st respondent to pass orders afresh after proper verification of the payments made by the petitioner along with the challans and on merits in accordance with law.

(In all W.Ps.)

For Petitioner : Mr.M.A.Mudimannan
For Respondents : Ms.R.Hemalatha (For R1)
Senior Standing Counsel
(in W.Ps. 12321 & 12322/2014 and
for R2 in W.P.No.12324/2014)

Mr.N.Nithianandam (For R2)
(in W.Ps. 12321 & 12322/2014
and for R3 in W.P.No.12324/2014)

C O M M O N O R D E R

The Orders-in-Original dated 07.04.2010, 08.11.2011 and 11.01.2010 respectively are sought to be quashed in the present Writ Petitions.

2.The preamble of the orders impugned reveals that "Any person deeming himself aggrieved by this order may appeal against the same to the Commissioner of Central Excise, (Appeals), No.26/1, Nungambakkam High Road, Chennai 600 034 within 3 months from the date of receipt of this order under Section 85 of Finance Act, 1994 read with Rule 8 of Service Tax Rules, 1994 in Form ST-4 in duplicate and be verified in the prescribed manner and be accompanied by a copy of the order appealed against". The procedures for filing an appeal are also contemplated in the orders impugned. However, the petitioner,



instead of preferring an appeal, has chosen to file the present Writ Petitions, raising grounds both on merits and on legal grounds.

3. This Court is of the considered opinion that the importance of an appeal remedy, at no circumstances, be undermined by the High Court and findings of the appellate authority would be of greater assistance for the High Court for exercise of power of judicial review under Article 226 of the Constitution of India. This apart, adjudication of complete facts by the appellate authority based on the original records and evidences are not only important, the legislative intention is to redress the grievances of the aggrieved person. However, such an exercise cannot be undertaken by the High Court in a writ proceedings. In the event of not providing an opportunity to an aggrieved person to exhaust the appellate remedy, undoubtedly the aggrieved person is not only deprived of an opportunity for complete adjudication of the facts and the grounds of law, but there is a possibility of error, commission and omission by the High Court in view of the fact that the High Court is deciding certain facts only based on the facts filed by the respective parties. All these aspects are very much important. In most of the circumstances, the parties who are filing Writ Petitions are narrating the facts to suit their convenience and entire facts are not placed some times or the litigants are of the opinion that those facts may not be required for the purpose of deciding the Writ Petitions. Opinions in this regard, offered by the legal brains, are taken into consideration by the litigants and petitions are filed. This apart, the High Court will not have the benefit of complete scrutinisation of the original documents which all are to be done by the original authority as well as by the appellate authority having jurisdiction. This being the importance of an appellate remedy and the legislative intention, this Court is of an opinion that the parties, at all circumstances, are expected to exhaust the appellate remedy contemplated under the statutes. Only on exceptional circumstances, where the proceedings are issued by an incompetent authority having no jurisdiction, or an allegation of malafides are raised, then alone the Writ Petitions are to be entertained and certainly not in a routine manner. Even in case of raising an allegation of malafides, the authority against whom such an allegation is raised must be impleaded as party respondent in his personal capacity. All these aspects are looked into by the High Court, in order to provide complete justice to the litigants who all are having certain grievances against the actions of the authorities.

4. 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.

5.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.

6.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.



7. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal in the prescribed format and complying with the procedures contemplated under the Act, before the jurisdictional appellate authority within a period of four weeks from the date of receipt of a copy of this order. In the event of filing any such appeal, the appellate authority shall condone the delay, if any, entertain the appeal and dispose of the same on merits and in accordance with law and by affording opportunity to the writ petitioner, as expeditiously as possible.

8. The learned counsel for the petitioner made a submission that the similar issues were considered by the High Court of Madras in C.M.A.No.764 to 788 of 2015 and an order was passed on 30.04.2016. The petitioner is at liberty to pursue the grounds as well as the legal principles settled by this Court in the said judgment, in the grounds of appeal and during the arguments before the appellate authority.

With these directions, all the Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Commissioner of Central Excise,
1, Vallalar Nagar, Manjakuppam,
Cuddalore 607 001.
2. The Chief General Manager (Finance)
Corporate Office, Neyveli Lignite Corporation,
Neyveli.
3. The Additional Commissioner of Central Excise
Goubert Avenue (Beach Road)
Puducherry.
4. The Commissioner of Central Excise
(Appeals) No. 26/1 Nungambakkam
High Road, Chennai 34.



+2 Ccs to M/s.R. Hemalatha, Advocate sr 36110.
+1 CC to M/s. Hema Muralikrishnan, Advocate sr 35757
+1 CC to Mr.N.Nithianandam, advocate sr 35772.

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GPL (CO)
SP (13/08/2021)