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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.22071 OF 2021

&

WMP.NOS.23287,23292, 23289, 23293 OF 2021

British Agro Products (India) P Ltd
(Rep by its Managing Director)
No.9, State Bank Officers Colony
Shastri Nagar, Adyar
Chennai - 600 020
PAN: AAFCB8238H.

... Petitioner

Vs

1. The Assistant Commissioner of Income Tax
National Faceless Assessment Centre, Delhi
E-Ramp, Jawaharlal Nehru Stadium,
Delhi - 110 003.
2. The Income Tax Officer,
Corporate Ward -1(3),
Income Tax Department,
121, Nungambakkam High Road
Chennai - 600 034.
3. The Principal Commissioner of Income Tax -1
Income Tax Department,
121, Nungambakkam High Road
Chennai - 600 034.

...Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the writ petitioner company on the file of the first respondent to quash the impugned order dated 23.09.2021 passed u/s 143 (3) r/w Section 144B of the Act for the Assesment Year 2018-19 in ITBA/AST/143(3)/2021-22/1035833472(1) and consequently direct the First Respondent to complete the fresh assessment for the assessment year 2018-19 after granting reasonable/sufficient opportunity of hearing and pass such other /further order or orders.



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For Petitioner : Mr.S.Sridhar
For Respondents : Mr.Prabhu Mukunth Arunkumar
Junior Standing Counsel (IT)

ORDER

In the captioned main writ petition, an 'assessment order dated 23.09.2021 bearing reference no.ITBA/AST/143(3)/2021-22/1035833472(1) pertaining to Assessment Year 2018-19 qua writ petitioner company' (hereinafter 'impugned order' for the sake of convenience and clarity) has been assailed.

2. A perusal of the impugned order reveals that it has been made under Section 143(3) of the 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] read with Section 144B of IT Act. To be noted, Section 144B of IT Act is captioned 'Faceless Assessment'.

3. Notwithstanding very many averments in the writ affidavit, notwithstanding several grounds raised in the writ affidavit, Mr. Sridhar, learned counsel for writ petitioner projects his case qua challenge to impugned order on two points and they are as follows:

(a) The impugned order was preceded by a show cause notice (SCN) dated 21.09.2021 and the SCN is captioned 'Show cause Notice as to why the proposed variation should not be made', this SCN has been digitally signed on 21.09.2021 and time has been given to the writ petitioner (to show cause) upto 59 minutes past 23 hours on 22.09.2021. In other words, just one day time was given for showing cause and this is too short more so considering the proposed variation.

b) Owing to the requirement under Section 144B(1) (xvi)(c), the draft assessment order should have been assigned to a review unit in any one Regional Faceless Assessment Centres through an automated allocation system and a review of the order should have been done and it is quite unlikely that this has been done as the impugned order has been made on 23.09.2021, one day after writ petitioner's reply to SCN.

4. Mr.Prabhu Mukunth Arunkumar, learned junior Standing Counsel, accepts notice on behalf of all the three respondents.

5. Owing to the narrow legal compass on which captioned main revision turns, with the consent of learned counsel on both sides, main writ petition is taken up.



6. Responding to the aforementioned two points urged by learned counsel for writ petitioner, learned Revenue counsel made submissions, a summation of which is as follows:

(a) It cannot be gainsaid that one day time given qua SCN is too short as the writ petitioner has chosen to reply the very next day i.e., 22.09.2021 and it has also not chosen to ask for a personal hearing, though there is an option to ask for personal hearing vide sub-paragraph (c) of Paragraph 3 of SCN.

(b) Adverting to the argument predicated on Section 144B(1)(xvi)(c) of IT Act, learned counsel submitted that in the light of automation it is quite feasible. Be that as it may, learned Revenue counsel pointed out that there is an alternate remedy available to the writ petitioner vide a statutory appeal under Section 246A of IT Act.

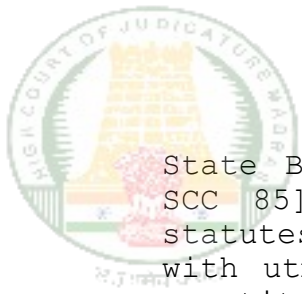
7. This Court now embarks upon the exercise of considering the rival submissions, setting out its discussion on the same and giving its dispositive reasoning qua conclusion.

8. The first point urged i.e., a mere one day time qua SCN under the normal circumstances would have certainly been a formidable argument, but not in this case qua writ petitioner as writ petitioner has a) chosen to reply on the very next day i.e., 22.09.2021 and has also not chosen to ask for a personal hearing vide sub-paragraph (c) of Paragraph 3 of SCN. This draws the curtains on the first point.

9. As regards the second point, this Court is of the considered view that it is dovetailed with the alternate remedy argument as that may well qualify as a ground of appeal rather than a ground compelling interference in writ jurisdiction.

10. Therefore, the second point is left open to be decided by the Appellate Authority if the writ petitioner chooses to file a statutory appeal under Section 246A.

11. This takes this Court to the alternate remedy rule. Alternate remedy rule no doubt is a rule of discretion. In other words, alternate remedy rule is not an absolute rule. It is a self-imposed restraint qua writ jurisdiction. However, Hon'ble Supreme Court in a long line of authorities/case laws starting from Dunlop India case [Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and others reported in (1985) 1 SCC 260], Satyawati Tandon case [United Bank of India Vs. Satyawati Tandon and others reported in (2010) 8 SCC 110] and K.C.Mathew case [Authorized Officer,



State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85] has repeatedly held that when it comes to fiscal statutes matters, the alternate remedy rule has to be applied with utmost rigour. To be noted, these three case laws do not constitute a exhaustive list, but are only some amongst the several celebrated judgments on this alternate remedy rule touching upon fiscal laws. On alternate remedy, relevant paragraph in Dunlop India case is paragraph 3 and relevant paragraph in K.C.Mathew case is paragraph 10, which read as follows:

Paragraph 3 of Dunlop India case

'3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.'

(Underlining made by this Court to supply emphasis and highlight)

Paragraph 10 of K.C.Mathew case

'10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

"43. Unfortunately, the High Court overlooked



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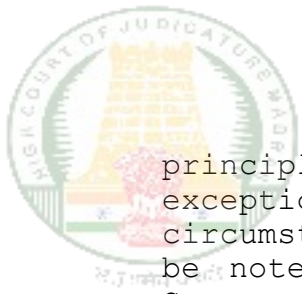
the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(underlining made by this Court to
supply emphasis and highlight)

12. To be noted, in aforementioned paragraph 10 in K.C.Mathew's case, Satyawati Tondon principle has been reiterated and therefore, this Court refrains itself from extracting and reproducing relevant paragraphs from Satyawati Tondon case law.

13. Be that as it may, very recently a three member Hon'ble Bench of Hon'ble Supreme Court speaking through Hon'ble Dr. Dhananjaya Y Chandrachud in Commercial Steel case law [The Assistant Commissioner of State Tax Appellant(s) and Others Vs.M/s Commercial Steel Limited], culled out the exceptions to alternate remedy rule and reiterated principle qua ration in Dunlop India, Satyawati Tandon and K.C.Mathew principles i.e.,



principle that interference qua writ jurisdiction should be an exception or in other words, only under exceptional circumstances where exception adumbrated therein attracted. To be noted, Commercial Steel case law was rendered by Hon'ble Supreme Court very recently i.e., as recently as on 03.09.2021. Relevant paragraphs in Commercial Steel case law are Paragraphs 11 and 12, which read as follows:

'11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.

12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was CA 5121/2021 7 not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

14. A perusal of adumbration of the exceptions read in the context of narrative, discussion and dispositive reasoning supra brings to light that none of the exceptions set out by Hon'ble Supreme Court qua Commercial Steel case law is attracted in the case on hand.

15. The sequitur to the discussion and dispositive reasoning thus far is, this is a fit case to relegate the writ petitioner to alternate remedy of statutory appeal inter alia under Section 246 A of IT Act subject of course to pre-deposit condition, if any and limitation. If the writ petitioner chooses to take the alternate remedy rule and file a statutory appeal, the Appellate Authority shall consider all the arguments/



grounds of appeal of the writ petitioner (including those raised in the instant writ petition) uninfluenced / untrammelled by observations made in this writ petition order. In other words, the appeal shall be considered and decided on its own merits and in accordance with law untrammelled by this order.

16. Owing to all that have been set out supra, the campaign of the writ petitioner against the impugned order comes to a conclusion, it fails and the sequitur is captioned main writ petition is dismissed albeit preserving the rights of the writ petitioner to prefer a statutory appeal, if so advised and if so desired. Consequently, the aforementioned WMPs also are dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gpa/nst

To

1. The Assistant Commissioner of Income Tax
National Faceless Assessment Centre, Delhi
E-Ramp, Jawaharlal Nehru Stadium,
Delhi - 110 003.
2. The Income Tax Officer,
Corporate Ward -1(3),
Income Tax Department,
121, Nungambakkam High Road
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3. The Principal Commissioner of Income Tax -1
Income Tax Department,
121, Nungambakkam High Road,
Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.54443

W.P.No.22071 of 2021 &
WMP.Nos.23287,23292, 23289, 23293 of 2021

AKII(CO)
PM/22/11/2021