IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.25463 of 2018
and W.M.P.No.29624 of 2018

M/s.NCR Corporation India Pvt. Ltd.,
Rep. By its Authorised Representative
Mr.Mohamed Kasim Sheriff,
17/5 B1A, 17/3 Vazhudavur Road,
Kurumbapet,
Puducherry 605 009. ..Petitioner

Vs.

The Commissioner of GST & Central Excise,
Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry 605 001. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in File No.C.No.V/Ch.84/15/48/2013 - Cx.,adj comprising of Order - In - Original No.11/2018 (C)(C.Ex) (Denovo) dated 31.07.2018 and quash the same as illegal, arbitrary and unconstitutional as the same is violative of Article 265 of Constitution of India.

For Petitioner : Mr.Akhil Suresh

For Respondent : Mr.Rajnish Pathyil
(Senior Central Government
Standing Counsel)

ORDER

The relief sought for in the present Writ Petition is to quash the order in original dated 31.07.2018, passed by the respondent.

2.The preamble of the Order-In-Original, more specifically, Clause 4 states that the appeal must be filed in the prescribed form, in quadruplicate, within 3 months from the date of its communication to the person whom it is addressed. When the Order-In-Original itself informs the petitioner that he has to prefer an appeal and such an appeal to the appellate Tribunal is contemplated under Section 35B of the Central Excise Act, 1994, no Writ Petition needs to be entertained. With reference to the Order-In-Original, the appellate authority is the final fact finding authority and all disputed facts and circumstances are to be adjudicated with reference to the documents and evidences made available. Mixed question of fact and law, if raised by the parties, are to be adjudicated before the appellate Tribunal, who is possessing expertise in the subject, in particular. Thus, exhausting the appellate remedy is of greater assistance to the High Court for the purpose of exercising the power of judicial review under Article 226 of the Constitution of India.

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 facts and circumstances, the petitioner is at liberty to approach the appellate authority, by preferring an appeal in a prescribed format, following the procedures contemplated, within a period of two weeks from the date of receipt of a copy of this order. The appellate authority, in the event of receiving any such appeal from the petitioner, shall entertain the same, condone the delay if any, and adjudicate the appeal on merits, in accordance with law and by affording opportunity to the parties concerned, as expeditiously as possible.

7.With these observations, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner of GST & Central Excise,
Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry 605 001.

+1cc to Mr.Rajnish Pathyil, Advocate, S.R.No.30458

W.P.No.25463 of 2018

PL(CO)
CB(22/07/2021)