



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.30728, 30730 & 30732 to 30734 of 2018
and W.M.P.Nos.35860, 35862, 35864, 35866 & 35868 of 2018
and W.M.P.Nos.8154, 8167, 9958, 9962 & 9963 of 2019

Durga Industries,
18/26, 2nd Street,
Loganathan Nagar,
Choolaimedu,
Chennai 600 094.
Rep. By its Managing Partner

...Petitioner in all W.Ps.

Vs.

Assistant Commissioner (CT),
Manali Assessment Circle,
Chennai.

...Respondent in W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Consitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings leading to passing of the Assessment Orders vide TIN:33661085304/2010-11, TIN:33661085304/2011-12, TIN:33661085304/2012-13, TIN:33661085304/2009-10 and TIN:33661085304/2013-14, dated 30.08.2018, quash the same and direct the respondent to pass fresh revised assessment order after providing an opportunity of reply and personal hearing.

(In all W.Ps.)

For Petitioner : Mr.S.Sathyanarayanan

For Respondent : Mr.V.Veluchamy
(Government Advocate)

C O M M O N O R D E R

The orders of assessment passed by the Assessing Authority in proceedings dated 30.08.2018 are under challenge in these present Writ Petitions.

2.Admittedly, against the order of assessment, the appeal before the appellate authority is contemplated and thereafter,

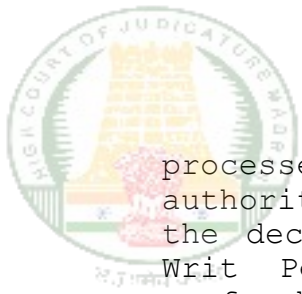


the aggrieved persons may approach the Tribunal and the High Court. Without exhausting all these appellate remedies, contemplated under the provisions of the Act, the petitioner has chosen to file these present Writ Petitions, under Article 226 of the Constitution of India.

3.The learned counsel appearing for the petitioner made a submission that the copy of the impugned orders were not served. However, it is admitted that subsequently, the said copies of the assessment orders, in original, were served to the petitioner. Even the original impugned assessment orders are enclosed along with the present Writ Petitions. The other grounds raised relating to the merits of the case need not be adjudicated by the High Court and such an adjudication requires verification of documents and evidences. All such disputed facts and question of law shall be decided by the appellate authority by verifying the records, evidences and considering the grounds raised. The learned counsel for the petitioner reiterated that no opportunity was given to the petitioner to defend his case. All such grounds may be raised before the appellate authority for redressal of grievances. The appellate authorities are exercising the quasi-judicial power and therefore, they are empowered to decide the mixed question of fact and law and thus, the petitioner is at liberty to raise all these grounds before the appellate authority for adjudication.

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.Thus, the petitioner is at liberty to prefer an appeal contemplated under the statute for redressal of his grievances by following the procedures. The petitioner is at liberty to prefer such an appeal 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 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.

8.With this liberty, the Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

gsa



To

The Assistant Commissioner (CT),
Manali Assessment Circle,
Chennai.

Copy to

The Appellate Deputy Commissioner (ST) North,
Chennai-6.

+1cc to the Government Pleader, S.R.No.30453

W.P.Nos.30728, 30730 & 30732 to 30734 of 2018

PCH(CO)

RVM(30/07/2021)