Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3632 OF 2022

Chai Garam Productions Pvt. Ltd., through its
director/Authorized person Mr. Zoeb Springwala … Petitioner
Vs.
1. Sales Tax Officer
2. Prime Focus Ltd. ... Respondents

Mr. Manoj Mishra, for the Petitioner.
Mr. Shrikant Pillai i/b. Naik Naik & Co., for Respondent No.2.
Ms. Jyoti Chavan, AGP for Respondent No.1.

CORAM : NITIN JAMDAR AND
GAURI GODSE, JJ.

DATE : 23 November 2022.

P.C.

The Petitioner has challenged the Order of Assessment passed by Respondent no. 1 on 11 February 2021 and since the same has not been complied with, the consequential action taken by the Respondent of freezing the bank account of the Petitioner.

2. Learned counsel for the Respondent and learned AGP oppose the Petition contending that in view of an alternate remedy of appeal available to the Petitioner where the Petitioner can raise all the arguments, the petition should not be entertained.

3. In the case of *CCE v. Dunlop India Ltd.*[1], Hon'ble Supreme Court held that Article 226 is not meant to short-circuit or by pass

[1] (1985) 1 SCC 260

statutory procedures. Only where statutory remedies are entirely ill-suited to deal with extraordinary situations, such as, where vires of the statute is raised or for prevention of public injury or to enforce public justice require that, a petition under Article 226 of the Constitution can be entertained. Even in such case, the writ court must have good and sufficient reason to bypass the alternative remedy provided by statute. It was emphasized that the matter of revenue where statutory remedies are available, writ jurisdiction ought not to be exercised. The Hon'ble Supreme Court observed that judicial notice can be taken of the fact that the majority of such petitions are filed solely for the purpose of obtaining interim orders and thereafter to prolong the proceedings by one device or the other. The Hon'ble Supreme Court noted that this practice certainly needs to be strongly discouraged. The Hon'ble Supreme Court in *CCT v. Indian Explosives Ltd.*[2] reversed the order passed by the High Court observing that the High Court had completely ignored the parameters laid down by this Court in a large number of cases relating to exhaustion of alternative remedy. In *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwala*[3]*,* the Hon'ble Supreme Court highlighted the parameters that a writ court must keep in mind, and observed that the Court while exercising its jurisdiction under Article 226 is duty-bound to consider, interalia, whether the petitioner has any alternative or effective remedy for the resolution of the dispute. Again, in the case of *Raj Kumar Shivhare v. Directorate of Enforcement*[4]*,* the Hon'ble Supreme Court while dealing with the issue as to whether the

2 (2008) 3 SCC 688
3 (2009) 1 SCC 168
4 (2010) 4 SCC 772

alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked, observed that when a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory remedy. This view is reiterated by the Hon'ble Supreme Court in the case of *United Bank of India vs. Satyawati Tondon and Ors.*[5]

4. Review of the above legal position was taken by the Hon'ble Supreme Court in the recent decision in the case of *State of Maharashtra & Ors. vs. Greatship (India) Ltd.*[6] while deciding a challenge to the order of the Division Bench of this Court, where the Division Bench had entertained a writ petition inspite of availability of alternate remedy, no cogent reason the respondent therein had sought to support the decision of the Division Bench entertaining the Writ Petition against the Order of Assessment by relying on various decisions including that of the Hon'ble Supreme Court in *Whirlpool Corporation vs. Registrar of Trademarks & Ors.*[7]. The Hon'ble Supreme Court observed that the assessee straightway preferred writ petition under Article 226 of the Constitution of India when it was not in dispute that the statutes provided for the right of appeal against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision would lie before the Tribunal. The Hon'ble Supreme Court held that the

[5] (2010) 8 SCC 110
[6] Civil Appeal No. 4956 of 2022
[7] (1998) 8 SCC 1

High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act and there was no exceptional reason. The appeal filed by the State Government was thus allowed on the ground that the High Court should not have entertained a writ petition inspite of alternate remedy.

5. There is thus merit in the contention raised by the Respondent, as it is based on the position of law settled by the Hon'ble Supreme Court. Considering the dicta laid down by the Hon'ble Supreme Court and the fact that the Petitioner has alternate remedy of Appeal, we dispose of the Writ Petition.

(GAURI GODSE, J.) **(NITIN JAMDAR, J.)**