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

WRIT PETITION NO.2077 OF 2021
WITH
WRIT PETITION NO.2141 OF 2021

Cisco Commerce India Private Limited ..... Petitioner

Vs.

The Union of India and Ors. ..... Respondents

Mr.D.B.Shroff, Sr.Adv. a/w Mr.Prasad Paranjape, Mr.Sanjeev Nair i/b M/s.Lumiere Law Partners for the Petitioner

Mr.J.B.Mishra a/w Mr.Satyaprakash Sharma, Mr.Amit Singh and Mr.Ranjith Aithe, Mr.Ashutosh Mishra for the Respondents

CORAM: S.V.GANGAPURWALA &
VINAY JOSHI , JJ.

DATED : MARCH 25 , 2022

P.C.

. Heard.

2. The Writ Petitions assail the order in Appeal and the order in Assessment passed by the Authorities.

3. The Respondents have raised preliminary objection that the petitioner has alternate remedy and can file an Appeal.

4. The learned Senior Advocate Mr. Shroff for the

petitioner strenuously contends that the availability of alternate remedy is not a bar for this court to invoke its writ jurisdiction under Article 226 of the Constitution of India. The learned counsel relies upon the judgment of the Apex Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others***[1] and submits that the High Court can exercise its powers under Article 226 of the Constitution of India in spite of the alternative statutory remedies, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without legal foundation.

5. In the present case, the impugned orders are passed in complete contravention of instructions contained in Circular and IR No.62/2018 dated 31.10.2018 issued by SVB and hence is without Jurisdiction. The learned Senior Advocate relying upon the judgment of the Apex Court in the case of ***Hero Cycles Ltd. vs. Union of India***[2] submits that the deviation on the part of the authority from following the law prescribed while performing its duty will tantamount to manifest injustice and would be a fit case for the court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. The learned Advocate also relies on the judgment of the Apex Court in the case of ***Institute of Chartered Accountants of India vs. L.K.Ratna and Others***[3] and ***Zuari Agro Chemicals Ltd. vs. Union of India***[4] and

1 (1998) 8 SCC 1
2 2009(240) E.L.T. 490 (Bom.)
3 (1986) 4 SCC 537
4 2014(307) E.L.T. 874 (Bom)

submits that Bill of Entry by making an endorsement thereon on a basis different from that claimed by the importer, would entitle the petitioner to approach the High Court instead of preferring remedy of Appeal. To buttress the submission that this court can exercise its writ jurisdiction inspite of availability of alternate remedy, further relies upon the following judgements:

a. BA Continuum India Pvt. Ltd. vs. Union of India[5]

b. Hari Vishnu Kamath vs. Syed Ahmad Ishaque and Others[6]

c. T.C.Basappa vs. T. Nagappa and Another[7]

d. Parry and Co. Ltd. vs. P.C.Pal, Judge of the Second Industrial Tribunal, Calcutta and Others[8]

6. The learned Senior Advocate submits that the Board Circulars are binding on the Revenue. In the present matter, the authorities have failed to adhere to the procedure and the circulars. The import pricing methodology adopted by the petitioner was thoroughly investigated by the SVB and the IR was issued recommending acceptance of the declared values. The past as well as the current imports made by the petitioner followed the same pricing methodology. The respondents erred in law to doubt the declared values relying on past imports made by the petitioner itself at higher prices, however, such higher prices were directly attributable to

5 2021 (49) G.S.T.L. 370 (Bom.)
6 AIR 1955 SC 233
7 AIR 1954 SC 440
8 AIR 1970 SC 1334

firm orders received in India for those transactions which were due to a variety of factors.

7. The SVB in its IR having accepted the pricing methodology of the petitioner, there was no case for the respondence to doubt and reject the declared values and re-determine the values based on identical imports made in the past.

8. The impugned orders are based on assumptions and presumptions and hence are unsustainable. The *lis* in the instant case emanated from the impugned orders passed by respondent 4 and 5. The issues involved were rejection of declared values under the Rule 12 of CVR, 2007 and re-determination of value under Rule 4 of CVR, 2007. The impugned orders passed by respondent 3 proceeds to hold further additions to assessable value under Rule 9 (1)(C) of CVR, 2007. The additions made under Rule 10(1)(c) of CVR, 2007, were never a part of adjudication proceedings before respondent 4 and 5. Further, no Show Cause Notice as envisaged by second proviso to 128A of the Act, was given to the petitioner by respondent no. 3. The rejection of declared values in the impugned orders were directly in teeth of the circular and IR No. 62/2018 dated 31.10.2018. The circular mandates that in case the circumstances of sale or terms and conditions of the agreement between the buyer and related seller changes, it shall be incumbent upon the proper officer to examine the transaction as per procedure laid down in the circular. The authorities have failed to adhere to the same. The matter ought to have been

referred to the jurisdictional Commissioner in terms of para 5.1 to 5.4 of the circular. The orders are issued de-hors the procedure prescribed in the circular and IR issued by SVB. The same is wholly without jurisdiction. The First Appellate Authority, in its operative part of the order directed the SVB to correct the evaluation. In fact, the matter ought to have been remanded to SVB.

9. The learned Senior Advocate further submits that the petition if it is relegated to the remedy of appeal, would face unnecessary hardship. The petitioner will be required to file 111 and 88 Appeals which will take long time to decide and the petitioner will have to face unnecessary erroneous assessments. The facts and circumstance of the case warrant interference of this court under Article 226 of the Constitution of India inspite of availability of alternate remedy.

10. Mr. Mishra, the learned counsel for the respondents submits that the petitioner has efficacious alternative remedy and is required to avail the same. The respondent authorities possess the necessary jurisdiction to pass the impugned orders. Opportunity of hearing has been extended to the petitioner. After hearing, the orders are passed. The petitioner has already availed the remedy of Appeal. Disputed questions of facts are involved in the matter. The procedure has been followed by the authority. In such scenario, this court would not invoke its writ jurisdiction and the petitioner be directed to avail the alternate remedy. The learned counsel to substantiate this contention relies on

the following judgements:

a. Hover Automotive India Private Limited vs. Union of India and Ors., Judgement dated 29.10.2021 passed in O.S. Writ Petition No.2223 of 2021

b. Union of India vs. Coastal Container Transporters Association, reported in 2019(22) G.S.T.L. 481 (S.C.)

c. Shri Prem Chand, Proprietor of Mahi Exports & Anr. vs. Union of India & Ors., Judgment dated 23.11.2021 passed in Civil Writ Petition No.7885 of 2021

d. The Assistant Commissioner of State Tax & Ors. vs. M/s.Commercial Steel Limited, judgment dated 03.09.2021 passed in Civil Appeal No.5121 of 2021

11. We have considered the submission manifested by the learned counsel for the authorities.

12. It is accepted by the petitioner that the Appeal is provided Against the impugned Order passed by the Commissioner of Customs (Appeals). Availability of alternative remedy is certainly not an anathema for this court to exercise its writ jurisdiction under Article 226 of the Constitution of India. The rule of alternate remedy is a rule of self-restraint. If substantive remedy of Appeal is available, the court would be slow to exercise its writ

jurisdiction under Article 226 of the Constitution of India. The Apex Court has held that Writ petition can be entertained in 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.

13. Reference can be had to the judgement of the Apex court in the case of ***The Assistant Commissioner of State Tax & Ors. vs. M/s.Commercial Steel Limited, judgment dated 03.09.2021 passed in Civil Appeal No.5121 of 2021.***

14. In the present case, the principle of natural justice appears to have been adhered to. Opportunity of hearing has been accorded to the petitioner. Petitioners are not challenging the vires of the statute or delegated legislation. The respondent authorities had the jurisdiction to pass the orders. Only because according to the petitioner, orders are erroneous or that there is some infraction of procedure, that would not be sufficient to term the order as an excess of jurisdiction or without jurisdiction. The factual dispute is about the valuation and the manner in which it had been valued is not accepted by the Commissioner or the Assessment Officer. Same can be challenged on merits. The said aspect can be dealt with and considered by the Appellate Authorities.

15. Moreover, the petitioner had already availed the remedy before the 1st Appellate Authority in the hierarchical of appeals. Against the original Assessment Order, the petitioner availed the remedy of Appeal before the Commissioner of Custom (Appeals). The Commissioner of Custom (Appeals) confirmed the order of assessment by dismissing the Appeal. The petitioner has remedy of Second Appeal. Once the petitioner has availed the remedy of appeal, it would be in appropriate to entertain the Writ Petition more particularly when further remedy of Appeal is available. There is no impediment for the petitioner to avail the remedy of Appeal. Only because the petitioners will have to file 111 and 88 Appeals would be no ground to invoke Writ Jurisdiction of this court.

16. In the light of the above, we are not inclined to entertain the Writ Petitions.

17. Both the Writ Petitions are disposed of with liberty to the petitioner to avail alternate remedy, as is permissible in law. In that event, all contentions on merits are kept open.

(VINAY JOSHI, J.) **(S.V.GANGAPURWALA, J.)**

At this stage, learned Senior Counsel for the Petitioner states that the Petitioner had assailed the order before this Court and now that the Petitioner is relegated to the Appellate Authority, the authority may not raise the issue of limitation. The learned Senior Counsel further submits that the Petitioner be allowed to file one appeal in each of the Writ Petitions. The Petitioner would pay court fees as would be applicable for all the appeals.

We have heard the learned Counsel for the Respondents.

Considering the fact that in one Writ Petition, the Petitioner is required to file 111 appeals and in another Writ Petition about 88 appeals, we allow the request of the Petitioner. The Petitioner may file one appeal in each Writ Petitions. However, the Court Fees would be paid as required to be paid, if individual appeals are filed. We further observe that if the appeals are filed within 15 days from today, the Appellate Authority shall consider the Appeals filed within limitation.

(VINAY JOSHI, J.) **(S.V.GANGAPURWALA, J.)**