BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.13887 of 2018
and
W.M.P(MD).No.12611 of 2018

M/s Miracles Sands & Chemicals,
4/191, 9th K.M.Ettayapuram Road,
Tuticorin 628 003
Rep by its Partner S.P.S.Palaniselvam ... Petitioner

Vs.

The Commissioner of CGST & Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai 625 002. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records on the file of the respondent in relation to the impugned order No.MDU-CEX-COM-47/2018 dated 15.03.2018.

For Petitioner :Mr.S.P.Maharajan
For Respondents :Mr.N.Dilip Kumar
Senior Standing Counsel
Assisted by Mr.K.Prabhu
Junior Standing Counsel

O R D E R

The present writ petition is filed against the impugned order No.MDU-CEX-COM-47/2018 dated 15.03.2018 on the file of the Respondent.

2. It is submitted by the learned counsel for the petitioner that there was no HT power supply from 14.09.1999 and the company was doing the mechanical process of mixing various grades of titanium ore and no chemical treatment or special process was carried out. At the end of the process, the separated mineral sands had the same form and properties as they had at the time of import. No upgradation or augmentation of purity of the mineral sand took place during the process. The petitioner has produced a copy of Technical opinion dated 29.03.2017 to drive home their point that the imported Titanium ore and the Titanium ore after mixing, remained the same. It was thus submitted that the impugned proceedings is unsustainable.

3. To the contrary, Mr.N.Dilip Kumar, learned Standing Counsel, appearing for the respondent submitted that the classification is essentially a question of fact and a writ petition would not lie to decide such questions of fact and in the present case, question as to the nature of process or treatment and whether the resultant product was one and the same as imported are essentially questions of fact in dispute.

4. This Court is of the view that there is merit in the submission of the learned counsel for the respondent. Matters of classifications are essentially mixed questions of fact and law. It would only be appropriate for the assessee to exhaust the statutory remedy by way of appeal. Writ petition under Article 226 of the Constitution of India would not normally lie in cases where alternate remedy is available, moreso, when it involves questions of fact. It is equally well settled that Courts would examine greater restraint in exercising the discretion under Article 226 of the Constitution of India in fiscal / tax matters where the statute provides remedy for redressal of any grievance.

5. In the circumstances, this Court is not inclined to entertain the writ petition against the impugned order. In this regard, it may be relevant to refer to the following judgment of the Supreme Court in the case of ***Thansingh Nathmal v. Supt. of Taxes**,* reported in ***AIR 1964 SC 1419*,** wherein, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In para 7, the Court observed thus :

> *"7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under*

Article 226 and sought to reopen the decision of the taxing authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is *claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."*

(emphasis supplied)

It is reiterated that there can be no doubt that even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not do so as a matter of course when the aggrieved person could have availed an effective alternative remedy in the manner prescribed by law.[1]

1 *Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad* [*Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad*, AIR 1969 SC 556] and also *Nivedita Sharma* v. *COAI* [*Nivedita Sharma* v. *COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947]

6. In view of the same, the writ petition is dismissed, however, liberty is granted to the petitioner to file a statutory appeal within a period of three weeks from the date of receipt of a copy of this order. If such appeal is filed, the same shall be entertained and disposed of by the Appellate Authority as expeditiously as possible, after affording a reasonable opportunity to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

19.10.2022

Index : Yes / No
Speaking Order : Yes / No
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MOHAMMED SHAFFIQ, J.

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To

1.The Assessment Unit
Income Tax Department,
National e-Assessment Centre, Delhi
E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.

2.The Principal Commissioner of Income Tax-1,
Madurai,
Income Tax Department,
Madurai, Tamilnadu 625 002.

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