

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.1164 of 2022
Date of decision: 03.02.2022**

Technobile Systems Pvt. Ltd.

...Petitioner

Versus

Union of India and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Rajesh Jain, Advocate for
Mr. Birinder Pal, Advocate
for the petitioner.

(Proceedings through V.C.)

AJAY TEWARI, J. (ORAL)

This is the petition filed under Article 226/227 of the Constitution of India read with the Finance Act, 1994 challenging the Order-in-Appeal dated 30th April, 2021 (Annexure P-1) passed by the Commissioner of CGST (Appeals), whereby demand of tax under the Finance Act, 1994 has been confirmed on the provision of Set Top Boxes (STB) with further prayer to issue a Writ in the nature of Mandamus declaring the said order, as patently without jurisdiction.

Notice of motion.

On asking of the Court, Mr. Sourabh Goel, Advocate accepts notice on behalf of the Respondents and states that the issues raised in this Petition can well be taken up in a Statutory Appeal before the CESTAT.

Learned counsel for the petitioner counters by arguing that in

the impugned order, the judgments specifically relied upon by the petitioner have not been considered and, therefore, this is breach of principles of natural justice and there are many precedents that in such cases, the mere availability of right of appeal would not bar the High Court from exercising its jurisdiction under Article 226 of the Constitution of India, though there is no doubt that there are certain judgments which say this, yet there are also many judgments which laid down where there is an efficacious remedy of appeal, Writ Petition should normally not be entertained.

In our considered view, the legal issue as has been raised by learned counsel for the petitioner, *viz.* non-reference to judgment relied upon can well be appreciated by the Tribunal and consequently, we relegate the petitioner to avail the remedy before the Appellate Tribunal.

The present Writ Petition stands disposed of, in the above terms.

(AJAY TEWARI)
JUDGE

February 03, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No