IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.NOS.10768, 10867, 17669 AND 17684 OF 2023
AND
W.M.P.NOS.10712, 10786, 16774 AND 16778 OF 2023
IN
W.P.NOS.10768, 10867, 17669 AND 17684 OF 2023

W.P.NO.10768 OF 2023

Ms.Aarshita Jain .. Petitioner

Vs.

1.The Adjudicating Authority (PMLA)
Prevention of Money Laundering
Room No.26, 4th Floor, Jeevan Deep Building,
Parliament Street,
New Delhi – 110 001.

2.The Deputy Director
Enforcement Directorate
Ministry of Finance, Dept. of Revenue
Chennai Zonal Office, 2nd & 3rd Floor,
Murugesa Naicker Complex,
No.84, Greams Road, Chennai – 600 006. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed in Original Complaint (OC) 1800/2022 dated 27.01.2023 by the 1st respondent / Adjudicating Authority (PMLA), quash the same, in so far as, petitioner / 11th defendant is concerned, as the said impugned order is passed without authority of law and in excess of the jurisdiction vested with the 1st respondent and also violative of Art. 19 & 21 of the Constitution of India in clear violation of the principles of natural justice.

For Petitioner : Mr.S.Baskaran

W.P.NO.10867 OF 2023

Smt.Aruna R. Jain .. Petitioner

Vs.

1.The Adjudicating Authority (PMLA)
Prevention of Money Laundering
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi – 110 001.

2.The Deputy Director
Enforcement Directorate
Ministry of Finance, Dept. of Revenue
Chennai Zonal Office, 2nd & 3rd Floor,
Murugesa Naicker Complex,
No.84, Greams Road, Chennai – 600 006. .. Respondents

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For Petitioner : Mr.S.Baskaran

W.P.NO.17669 OF 2023

Shri Ramlal Jain .. Petitioner

Vs.

1.The Adjudicating Authority (PMLA)
Prevention of Money Laundering
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi – 110 001.

2.The Deputy Director
Enforcement Directorate
Ministry of Finance, Dept. of Revenue
Chennai Zonal Office, 2nd & 3rd Floor,
Murugesa Naicker Complex,
No.84, Greams Road, Chennai – 600 006. .. Respondents

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For Petitioner : Mr.S.Baskaran

W.P.NO.17684 OF 2023

M/s.Kawarlal & Co.,
No.27, Raghunayakulu Street,
Park Town, Chennai – 600 003.
By its Proprietor K.Ramlal Jain .. Petitioner

Vs.

1.The Adjudicating Authority (PMLA)
Prevention of Money Laundering
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi – 110 001.

2.The Deputy Director
Enforcement Directorate
Ministry of Finance, Dept. of Revenue
Chennai Zonal Office, 2nd & 3rd Floor,
Murugesa Naicker Complex,
No.84, Greams Road, Chennai – 600 006. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed in Original Complaint (OC) 1800/2022 dated 27.01.2023 by the 1st respondent / Adjudicating Authority (PMLA), quash the same, in so far as, petitioner / 9th defendant is concerned, as the said impugned order is passed without authority of law and in excess of the jurisdiction vested with the 1st respondent and also violative of Art. 19 & 21 of the Constitution of India in clear violation of the principles of natural justice.

For Petitioner : Mr.S.Baskaran

COMMON ORDER

[Order of the Court was made by M.SUNDAR, J.]

This common order will now dispose of captioned four 'Writ Petitions' ('WPs' for the sake of convenience and clarity) and captioned four 'Writ Miscellaneous Petitions' ('WMPs' for the sake of convenience and clarity) thereat.

2.In the captioned four WPs, orders made by the first respondent under Section 8(3) of 'The Prevention of Money Laundering Act, 2002' (hereinafter referred to as 'PMLA' for the sake of convenience and clarity) have been called in question. This order dated 27.01.2023 made by the first respondent being a 'common order vide Original Complaint (OC) 1800/2022 in PAO No.09/2022 dated 01.08.2022 in ECIR Nos.CEZO-I/05/2019, CEZO-I/37/2020 and CEZO-I/42/2020' shall hereinafter referred to as 'impugned order' for the sake of convenience and clarity.

3.To be noted, captioned WPs are in the admission Board and we are testing the captioned WPs for admission. To be noted, there were multiple listings of rescheduling, re-notification and adjournments earlier (all in the Admission Board).

4.In the light of the common order we propose to make, we deem it appropriate to not to delve into great details qua facts, to put it differently we do not propose to be detained by facts that are not imperative for disposal of the captioned WPs.

5.Short facts shorn of elaboration i.e., necessary facts that are essential and imperative for appreciating this common order are that an order of provisional attachment dated 01.08.2022 was made under Section 5(1) of

PMLA by the second respondent and this provisional attachment pertains to multiple immovable properties; that this order of provisional attachment went to the 'first respondent' ('Adjudicating Authority' for the sake of convenience and clarity) in accordance with the statutory scheme qua PMLA; that the first respondent / Adjudicating Authority thereafter made the impugned common order dated 27.01.2023; that 27.01.2023 is 180th day qua provisional attachment made on 01.08.2022 by the second respondent; that 27.01.2023 impugned order was made by the first respondent in a virtual hearing i.e., hearing on a videoconferencing platform; that it may not be necessary to delve further into facts for reasons already alluded to supra.

6.Mr.S.Baskaran, learned counsel on record for writ petitioners in the captioned four WPs submitted that the aforementioned impugned order dated 27.01.2023 made by the first respondent was communicated to the writ petitioners only on 31.01.2023 at 17:27 hours (05.27 pm) by way of an attachment to an electronic mail. Learned counsel submitted that the impugned order was uploaded in the official website on 31.01.2023. Learned counsel adverting to the envelopes in which the impugned order was communicated to the writ petitioners submitted that the envelopes appear to have been despatched on 04.02.2023 as it has been received by addressees only on 06.02.2023. Learned counsel took us through the postal seal dated 06.02.2023 at Chennai and submitted that normally Speed Post with acknowledgment due is delivered within 48 hours and therefore, it is submitted that the impugned order would have been despatched on 04.02.2023 but it is not necessary to embark upon an exercise or drill in this regard, as the primary question that arises for consideration is alternate remedy that is available to the writ petitioners.

7.There is no disputation or disagreement that the writ petitioners have an alternate remedy by way of an appeal to Hon'ble Appellate Tribunal, PMLA, New Delhi under Section 26 of PMLA.

8.As regards alternate remedy, law is well settled that alternate remedy is not a bar for exercise of writ jurisdiction and that alternate remedy qua writ jurisdiction is a self imposed restraint. In other words, alternate remedy rule is not a absolute rule and it is a rule of discretion. Be that as it may, as regards the alternate remedy rule which is not a absolute rule and a rule of discretion, Hon'ble Supreme Court in a long line of authorities has repeatedly held that in fiscal law, the rigor of application of alternate remedy rule is very high. The oft quoted relevant case law qua alternate remedy rule are ***Dunlop India*** [***Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and others*** reported in ***(1985) 1 SCC 260***]***, Satyawati Tandon*** [***United Bank of India Vs. Satyawati Tondon and others*** reported in ***(2010) 8 SCC 110***], ***K.C.Mathew*** [***Authorized Officer, State Bank of Travancore Vs. Mathew K.C.*** reported in ***(2018) 3 SCC 85***], ***Commercial Steel*** [***The Assistant Commissioner of State Tax and Others Vs.M/s Commercial Steel Limited*** reported in ***2021 SCC OnLine SC 884***] and ***Greatship [State of Maharashtra and Others Vs.Greatship (India) Limited*** reported in ***2022 SCC OnLine SC 1262].***

9.Relevant paragraph in ***Dunlop India*** case is paragraph 3 and the same reads as follows:

> '**3. ....** *Article 226 is not meant to short-circuit or*

circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.'

10.In ***K.C.Mathew*** case, relevant paragraph is paragraph 10 and the same reads as follows:

*'10.In **Satyawati Tondon** the High Court had*

restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

> *"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament*

and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

* * *

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their *discretion in such matters with greater caution, care and circumspection.'*

11.To be noted, in ***K.C. Mathew's*** case, the paragraph extracted and reproduced supra, ***Satyawati Tondon*** principle has been reiterated.

12.Relevant paragraphs in ***Commercial Steel*** are Paragraphs 11 and 12 and the same read as follows:

'11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained 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.

12 In the present case, none of the above exceptions *was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'*

13.Relevant paragraph in ***Greatship*** is Paragraph 16 and the same reads as follows:

'16. *Now so far as the reliance placed upon the decisions of this Court by the learned Senior Advocate appearing on behalf of the respondent, referred to hereinabove, are concerned, the question is not about the maintainability of the writ petition under Article 226 of* *the Constitution, but the question is about the entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. There are serious disputes on facts as to whether the assessment order was passed on 20.03.2020 or 14.07.2020 (as alleged by the assessee). No valid reasons have been shown by the assessee to by-pass the statutory remedy of appeal. This Court has consistently taken the view that when there is an alternate remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under constitutional provisions.'*

14.As regards exceptions to the aforementioned alternate remedy rule which is not a absolute rule and a rule of discretion, they are:

(a)violation of principles of natural justice;

(b)breach of fundamental rights;

(c)excess of jurisdiction; and

(c)challenge to vires of a statute or delegated legislation.

15.In the case on hand, we find that the aforementioned points urged by learned counsel for writ petitioners does not qualify as one of the exceptions to alternate remedy rule. To be noted, on a demurer, even if PMLA is not construed as fiscal law the point urged (180 days point) does cut ice and it does not pass muster qua alternate remedy rule as it does not fit into any of the exceptions culled out from well settled case law jurisprudence and adumbrated supra.

16.Be that as it may, we also make it clear that the writ petitioners have raised several points on merits in their campaign against the impugned common order made by the first respondent but as this Court is not entertaining captioned WPs by applying the alternate remedy rule, it is deemed appropriate to not to embark upon the exercise of examining the same. We should also record that learned counsel for petitioners submitted that he is conscious of the alternate remedy rule and therefore, predicated his admission board campaign on the aforementioned 180 days point for our consideration and in this view of the matter also, we deem it appropriate to not to discuss the merits of the writ petitioners' campaign against the impugned common order. There is another perspective to this and this we are now relegating the writ petitioners to the alternate remedy of approaching the

Appellate Tribunal under Section 26 of PMLA and therefore, all questions (including the aforementioned 180 days point) should be left open for the writ petitioners to be urged before the Appellate Tribunal. We also make it clear that it is open to the Appellate Tribunal to consider all the points including the aforementioned 180 days point on its own merits and in accordance with law untrammeled by this order, which is made for the limited purpose of testing the captioned four WPs in the admission Board.

17.Learned counsel at this juncture drew our attention to the limitation for approaching the Appellate Tribunal contained in sub-section (3) and proviso thereat of Section 26. A careful reading of sub-section (3) and proviso thereat makes it clear that the Appellate Tribunal should be approached within 45 days from the date on which the impugned order is received by the appellant and the proviso is an enabling proviso which enables the Appellate Tribunal to condone delay and entertain an appeal beyond 45 days, i.e., after expiry of 45 days.

18.Be that as it may, we notice that there is no cap as regards condonation. By saying no cap, we mean that the Appellate Tribunal is not stifled when it comes to condonation of delay and any length of delay can be condoned. However, in the case on hand, adverting to the case file, learned counsel submitted that the impugned order has been received by the writ petitioners only on 06.02.2023 and captioned writ petitions have been filed in this Court on 20.03.2023. Learned counsel submitted that this is within 45 days and therefore, the time spent in this Court qua captioned WPs may please be excluded qua limitation for approaching the Appellate Tribunal. We find this submission to be a very reasonable plea but as a matter of good order, we deem it appropriate to leave it to Hon'ble Appellate Tribunal to consider this plea.

19.The narrative, discussion and dispositive reasoning set out supra drops the curtains on the captioned four WPs and the WMPs thereat. We deem it appropriate to say that the captioned writ petitions are disposed of as closed albeit preserving all the rights and contentions of the writ petitioners to approach the Appellate Tribunal under Section 26 of PMLA. Consequently, connected WMPs are also disposed of as closed. There shall be no order as to costs.

(M.S., J.) **(R.S.V., J)**

14.07.2023

Index : Yes
Speaking
Neutral Citation : Yes
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