IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.34206 of 2022
and
W.M.P.No.33654 of 2022
in
W.P.No.34206 of 2022

Vikas Sharma
S/o. Zile Singh
B-401, Varundavan Pearl-2
Opp. to Omkar Bunglows
TP-44, Chandkheda
Ahmedabad. .. Petitioner

Vs.

The Additional Commissioner of Customs
Adjudication - Air
O/o The Principal Commissioner of Customs,
Commissionerate - 1
Chennai Airport
New Custom House
Meenambakkam, Chennai-600 027. .. Respondent

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent herein in O.S.No.DRI/CZU/VIII/48/ENQ-1/INT-03/2020 and order in original 120/2022-23 dated 12.07.2022 and quash the same and consequently, direct the respondent to give an opportunity of being heard to the petitioner and by affording cross-examination of witnesses.

For Petitioner : Mr.A.Ganesh

*****

O R D E R

A Customs Officer in Anna International Terminal, Chennai International Airport is the writ petitioner in the captioned writ petition.

2. Captioned matter was listed in the Admission Board and Mr.A.Ganesh, learned counsel on record for writ petitioner was before this writ Court.

3. Short facts are that the 'Directorate of Revenue Intelligence' Chennai ['DRI' for the sake of brevity] based on specific intelligence that 18 carriers were involved in gold smuggling from various countries such as Dubai, Malaysia, Srilanka with the connivance of some customs officers,

maintained surveillance along with independent witnesses; that based on intelligence inputs that one individual was co-ordinating with 2 customs officers (one of them is the writ petitioner) allegedly by passing on photographs and flight details of carriers confronted the officers; that according to the Department, initially the said officers denied their involvement but subsequently, they admitted that they planned to clear some passengers arriving by certain flights; that there was an interception, 18 passengers who arrived by various flights were intercepted; that according to the Department, they were carrying gold in paste form in bundle shaped packets concealed in their rectum; that passengers opted for personal search; that passengers voluntarily accepted to eject the packets; that on 20.02.2020, a statement was recorded from the writ petitioner under Section 108 of 'The Customs Act, 1962 [Act 52 of 1962]' [hereinafter 'said Act' for the sake of convenience and clarity]; that in this statement, the writ petitioner has *inter alia* agreed that Seizure Mahazar dated 19.02.2020 was drawn at Chennai Airport; that consequent to such admission by the writ petitioner and further admission for having secreted monies gathered in his house, search proceedings were initiated by DRI officials *inter alia* at the residence of the writ petitioner at No.8, 3rd Floor, U-Block, Lotus Colony, Nandanam, Chennai-600 035 and huge amounts of cash were said to have been recovered; that the respondent resorted to adjudication proceedings; that adjudication proceedings culminated in an 'order dated 12.07.2022 bearing reference O.S.No.DRI/CZU/VIII/ENQ-1/INT-03/2020 and order in original 120/2022-23-COMMISSIONERATE-I' [hereinafter 'impugned order' for the sake of convenience and clarity]; that in the impugned order, it has been recorded that the writ petitioner has sent several letters dated 26.03.2021, 30.03.2021, 05.06.2021 and 26.06.2021 through his counsel seeking English translation of certain documents; that subsequently, vide letters dated 17.02.2022, 25.03.2022 and 20.04.2022, the writ petitioner also requested for cross-examination of co-noticees, that too, after 2 years from booking of the case; that it has been recorded in the impugned order that despite several personal hearings extended to the writ petitioner and other co-noticees, they were adopting dilatory tactics by either seeking time on one pretext or the other or asking for cross-examination of co-noticees; that it is under such circumstances, the impugned order came to be made; that the packing materials namely, adhesive tapes and polythene covers were seized vide Mahazar dated 19.02.2020; that 400 kilograms of gold valued at Rs.160 Crores has been successfully smuggled in the past and Sections 111(d), 111(l) and 111(m) have been resorted to;

4. In the above backdrop, the captioned writ petition has been filed assailing the impugned order. To be noted, as already alluded to supra, the writ petitioner is a Customs Officer.

5. Learned counsel in his campaign against the impugned order, notwithstanding very many averments in the writ affidavit focused his submissions on the following grounds:

> (a) Under Section 124(c) of said Act, reasonable opportunity of being heard has to be given but no personal hearing was given to the writ petitioner before making the impugned order. Elaborating on this, it was submitted that this is violation of 'NJP' ['Natural Justice Principles']. Further elaborating on this, learned counsel drew the

attention of this Court to second proviso to Section 122A of said Act captioned 'Adjudication Procedure' and argued that atleast three hearings should have been held as part of personal hearing;

(b) Learned counsel initially attempted to say that cross-examination of co-noticees is a right and the same has been denied but subsequently, he stated that he would restrict his submission to personal hearing;

(c) Judgment of Hon'ble Supreme Court in ***Ayaaubkhan*** case ***[Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and others]*** being an order dated 08.11.2012 in Civil Appeal No.7728 of 2012, judgment of Hon'ble Division Bench of Gujarat High Court in ***Vulcan Industrial*** case law ***[Vulcan Industrial Engineering Co. Ltd., Vs. Union of India*** reported in ***2013 (297) E.L.T. 190 (Guj.)]*** and another judgment of Hon'ble Supreme Court in ***Veetrag Enterprises*** case law ***[Veetrag Enterprises Vs. Commr. of Cus. (Seaport***

Exports), Chennai reported in 2015 (330) E.L.T. 74 (Mad.)] were pressed into service *inter alia* in support of personal hearing and cross examination pleas;

6. This writ Court, carefully considered the submissions made by learned counsel for writ petitioner in the light of case laws that were pressed into service. To be noted, some other case laws have been annexed as part of typed set of papers but only the aforementioned case laws were pressed into service. This writ Court after careful consideration in this matter is of the considered view that the captioned writ petition does not pass muster in the Admission Board and it deserves to be dismissed. The reasons i.e., dispositive reasoning coupled with discussion qua points urged are as follows:

(i) The first point turns on personal hearing. As already alluded to supra while capturing the factual matrix, the impugned order says that several personal hearings were extended to the writ petitioner but dilatory tactics were adopted. This is articulated in paragraph

No.21 of the impugned order and the relevant portions thereat reads as follows:

> *'21......................As far as ...., Shri Vikas Sharma, ... and .... are concerned despite several personal hearings extended to them, I observe that they were all adopting dilatory tactics of either seeking time on one pretext or the other or were asking for cross examination of the co-noticees. In this regard it is pertinent to point out that the Hon'ble Apex Court in Kanungo & Company Vs. Collector of Customs and Ors. on 7 February 1972 in para 12 of the said judgment had held that :*
>
> *"In our-opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities"*
>
> *..................................... '*

To be noted, names of co-noticees have been masked considering the nature of the matter while producing the extract. This is more so, as the writ petitioner who is a Customs Officer is only before this Court. To be noted, basic principle is, all official acts are presumed to have been done officiously unless the contrary is established. In any event, there is no disputation or contestation about search and seizure. Therefore, the question of personal hearing and several opportunities said to have been granted itself is pressed into the realm of contestation / disputation which turns on facts. This takes this writ Court to Alternate Remedy Rule. Alternate Remedy Rule no doubt, is not an absolute rule. In other words, it is a rule of discretion. It is not just a rule of discretion but it is a self imposed restraint qua writ Court. In the case on hand, the impugned order has been made under Section 110 of said Act and an appeal to the Commissioner of Customs (Appeals) lies under Section 128 of said Act. If the alternate remedy is availed, the factual disputations, if any, can always be gone into. In this regard, this writ Court reminds itself of a long line of authorities starting from ***Dunlop*** case [***Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India***

Ltd., and others reported in ***(1985) 1 SCC 260]***, ***Satyawati Tandon*** principle [***United Bank of India Vs. Satyawati Tondon and others*** reported in ***(2010) 8 SCC 110***], ***K.C.Mathew*** case [***Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.*** reported in ***(2018) 3 SCC 85***], ***Commercial Steel Limited*** case [***The Assistant Commissioner of State Tax and Others Vs. M/s Commercial Steel Limited*** reported in ***2021 SCC OnLine SC 884***], and ***Greatship*** case law ***[State of Maharashtra and Others Vs. Greatship (India) Limited*** reported in ***[2022 SCC OnLine SC 1262]***.

(ii) In ***Dunlop*** case, respondent claimed benefit of exemption from excise duty to the tune of Rs.6.05 Crores in respect of tyres manufactured by them, on the basis of a notification issued by the Government of India, Ministry of Finance (Department of Revenue) but the department did not grant the exemption. Therefore, the respondent filed a writ petition before the Calcutta High Court seeking interim order restraining the Central Excise authorities from levying and collecting excise duty. Learned Single Judge granted an interim order by allowing benefit of exemption to the tune of Rupees two crores ninety three lakhs and eighty five thousand, for which sum the respondent was directed to furnish a bank guarantee. On appeal, Hon'ble Division Bench confirmed the order of learned Single Judge with a modification that the Collector of Central Excise was given liberty to encash 30% of bank guarantee. Aggrieved by the same, Department preferred appeal before Hon'ble Supreme Court. Hon'ble Supreme Court allowed the appeal with costs. Relevant paragraph in aforementioned ***Dunlop*** case law is paragraph No.3 and most relevant portion of 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. <u>Surely matters involving the revenue where statutory remedies are available are not such matters</u>. 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.'

(Underlining made by this Court to supply emphasis and highlight)

(iii) In ***Satyawati Tandon*** case, appellant sanctioned term loan to respondent No.2 and Respondent No.1 gave guarantee for repayment of the same and mortgaged her property. As there was irregular repayment, appellant filed an application under section 14 of 'the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002' (hereinafter 'SARFAESI Act' for the sake of brevity), which was allowed by the District Magistrate / Collector, Allahabad. Respondent No.1 filed CMWP No.55375 of 2009 seeking to restrain the appellant from taking coercive action. A Division Bench of the Allahabad High Court passed an order restraining the appellant from taking action pursuant to the notice issued under Section 13(4) of the SARFAESI Act, against which the appellant moved Hon'ble Supreme Court. Hon'ble Supreme Court held that while dealing with the petitions involving challenge to the action taken for recovery of 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.

(iv) ***Satyawati Tandon*** principle was reiterated by Hon'ble Supreme Court in ***K.C.Mathew*** *case. In* ***K.C.Mathew*** case, there was a default in repayment of loan by the respondent. The respondent's account was declared to be a non performing asset. As the respondent failed to pay dues, appellant initiated SARFAESI proceedings against which respondent moved High Court by stating that bank has not considered the request for regularistion of loan account and the High Court granted an interim order. As against the interim order, appellant bank carried the matter to Hon'ble Supreme Court. Hon'ble Supreme Court held that when alternate statutory remedy is available, it should have been availed and a Writ Petition under Article 226 of the Constitution of India should not be entertained. Relevant paragraph in ***K.C.Mathew*** case 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.'

(underlining made by this Court to supply emphasis and highlight)

(v) ***Commercial Steel*** is a case where the High Court set aside the action of the appellants in collecting an amount from the respondent towards tax and penalty under the Central Goods and Services Tax Act, 2017 (CGST) and State Goods and Services Tax Act (SGST) and directed refund with interest. The case of the Revenue was that the respondent was attempting to sell the goods in the local market by evading SGST and CGST in the guise of an inter State sale. A detention order was issued. The respondent had paid the tax and penalty. Thereafter, respondent initiated writ proceedings under Article 226 of the Constitution of India and the High Court entertained the writ petition and directed refund of the amount collected towards tax and penalty, against which appellant approached Hon'ble Supreme Court. Hon'ble Supreme Court has held in paragraph Nos.11 and 12 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 CA 5121/2021 7 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.'

(vi) Relevant paragraphs which give facts in ***Greatship*** case are paragraphs 2 to 5 which reads as follows:

'**2.** *That the respondent - original writ petitioner was subjected to proceedings under the Maharashtra Value Added Tax, 2002 (hereinafter referred to as the 'MVAT Act') and Central Sales Tax Act, 1956 (hereinafter referred to as the 'CST Act'). The Assessing Officer issued notice of assessment dated 01.02.2018 calling upon the* *assessee to produce relevant documents and also to show cause as to why it should not be assessed under the relevant provisions of Section 23 of the MVAT Act.*

***3.** According to the writ petitioner, the writ petitioner submitted the required documents and also showed cause vide letter dated 03.05.2018. That a personal hearing was fixed on 16.03.2020. However, on 16.03.2020 the Assessing Officer was not available and therefore no hearing took place. According to the writ petitioner, multiple telephone calls were made to the Assessing Officer on 17.03.2020, 18.03.2020 and 19.03.2020 for personal hearing, but no such hearing materialised. According to the writ petitioner, vide letter dated 20.03.2020 it was submitted before the Assessing Officer that for the financial year under consideration the relevant documents had already been submitted and personal hearing was requested. The Assessing Officer passed an order on 20.03.2020 determining the tax liability along with interest and penalty under the MVAT Act and CST Act.*

***4.** That without preferring any appeal before the first appellate authority, the respondent - assessee - original writ petitioner filed a writ petition before the High Court challenging the assessment order passed under the provisions of the MVAT Act and CST Act alleging inter alia that no order was passed on 20.03.2020 and it was passed in the month of July, 2020, which was beyond the period of limitation. The High Court has entertained the* *said writ petition against the assessment order under Article 226 of the Constitution of India and has passed the impugned judgment and order quashing and setting aside the assessment order and the demand notice.*

***5.** Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the State of Maharashtra and others have preferred the present appeal.'*

The ratio laid down in ***Greatship*** case law is articulated in 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.*'

(vii) The above line of authorities / case laws make it clear that Hon'ble Supreme Court has repeatedly held that when it comes to fiscal law and more particularly cases of this nature where the allegation is confiscation of huge quantity of gold having been smuggled, the rigour of the rule of alternate remedy is increased. The bar is increased. As regards alternate remedy rule, it was also pointed out that it calls for a pre-deposit of 7.5% of duty demand or the duty and penalty in dispute. This can hardly be a ground to say that the alternate remedy is not efficacious. This is hardly a ground to say that this writ Court should embark upon a legal drill of resolving factual disputations which are being raised. As regards personal hearing, in the light of the affirmative articulation in paragraph No.21 of the impugned order made by the respondent, (relevant portions extracted and reproduced supra) this Court is of the considered view that it is for the Appellate Authority to examine the same if an appeal is preferred as the records would speak for itself. In the case on hand, several statements have been recorded including that of the writ petitioner and therefore, as the dates have been given with specificity seen in the light of a letter dated 28.07.2022 written by counsel for the writ petitioner to which the attention of this Court is drawn, this Court finds that personal hearing is a matter which turns on factual disputation and the same can be gone into by the Appellate Authority if the writ petitioner chooses to avail the alternate remedy of appeal. This answers NJP facet of the matter.

(viii) As regards Section 122A captioned 'Adjudication Procedure' and more particularly proviso to sub-section (2) thereat, this writ Court is unable to accept the interpretation which the learned counsel for writ petitioner wants to place on the proviso. Proviso to sub-section (2) of Section 122A reads as follows:

> *'122A. Adjudication Procedure*
>
> *1 ....*
>
> *2. The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1) grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing;*
>
> *Provided that no such adjournment shall be granted more than three times to a party during the proceeding.'*

(ix) A bare reading of the above proviso makes it clear that it is only a cap on the number of adjournments that can be granted. It only says that more than three adjournments should not be granted. This is to expedite the adjudication procedure. It cannot be gainsaid that this means that the Adjudicating Authority should hold not less than three hearings. Such an interpretation, is in the considered view of this writ Court completely unacceptable as it is contrary to the plain language of the Statute. Proviso has to be construed strictly and the proviso which is in the nature of a bar cannot be interpreted to say that it is statutory requirement in terms of number of hearings that have to be held. To be noted, the language in which the proviso is couched clearly mentions about 'adjournments'.

(x) This takes this writ Court to the case laws that were pressed into service by learned counsel in his campaign against impugned order. Before embarking upon the exercise of discussion on case laws, this writ Court reminds itself of the declaration of law made by a Hon'ble Constitution Bench in celebrated ***Padma Sundara Rao*** case ***[Padma Sundara Rao Vs. State of Tamil Nadu*** reported in ***(2002) 3 SCC 533]***. This is declaration of law where Hon'ble Supreme Court laid down the manner in which reliance on case law has to be made. Most relevant paragraph qua declaration of law made by Hon'ble Supreme Court in celebrated ***Padma Sundara Rao*** principle is paragraph No.9 and the same reads as follows:

> *'**9.**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

(xi) After reminding itself of celebrated ***Padma Sundara Rao*** declaration of law, a careful perusal of case laws unfurls this scenario in this writ Court. ***Ayaaubkhan*** case rendered by Hon'ble Supreme Court is one pertaining to reference of a Scheduled Tribe certificate by vigilance to the Scrutiny Committee. In that context, Hon'ble Supreme Court, in paragraph No.46 thereat held that the Scrutiny Committee had conducted an enquiry and an application for cross-examination of witnesses must be disposed of. A Scheduled Tribe Certificate and examination of the same by a Scrutiny Committee is completely different from the facts of the case on hand which pertains to alleged smuggling of huge quantity of about 400 kilograms of gold said to be valued at 160 Crores INR. Comparing the two facts in the considered view of this writ Court is comparing Apples and Oranges or to put it differently comparing Chalk and Cheese. That by itself makes it clear that if the declaration of law made by the Constitution Bench of ***Padma Sundara Rao principle,*** is applied, ***Ayaaubkhan*** case does not aid the writ petitioner in the case on hand. To add specificity, this is to be noticed that Scheduled Tribe Certificate is a affirmative action which is constitutionally provided and that cannot be pressed into service in a customs case pertaining to alleged smuggling of huge quantity of about 400 kilograms of gold said to be valued at about 160 Crores INR. In any event, these are factual assertions as contained in the impugned order, subject to appeal, if any, by the writ petitioner who is a Customs Officer.

(xii) As regards ***Vulcan Industrial*** case law rendered by Hon'ble Division Bench of Gujarat High Court, a careful perusal of Excise Law Times (ELT) report placed before this writ Court brings to light that the facts are not clear. Absent facts, this writ Court does not want to venture into the views of Hon'ble Division Bench of another High Court which has persuasive value. This takes this Court to ***Veetrag Enterprises*** case law which is a case where the petitioner has sought to defer the date of personal hearing and it is a case of import of coated gummed paper. More importantly, that is also a case where this Hon'ble Court had permitted provisional release of the consignment. This is articulated in paragraph No.3 of ***Veetrag Enterprises*** case law. Provisional release is under Section 110A of said Act. This means that ***Veetrag Enterprises*** case law is a case where the importability of the consignment was not in dispute. To this extent, ***Veetrag Enterprises*** case law is clearly distinguishable on facts. As ***Veetrag Enterprises*** case law is clearly distinguishable on facts, it does not come to the aid of learned counsel for writ petitioner in his campaign against the impugned order in the case on hand though ***Veetrag Enterprises*** case law had referred to ***Ayaaubkhan*** case and ***Vulcan Industrial*** case law referred to supra. In this view of the matter, all the three case laws do not come to the aid of writ petitioner's counsel in his campaign against the impugned order.

(xiii) One other facet of the matter is, there is no disputation that a show cause notice was issued and that caused the aforementioned letter dated 28.07.2022 from the writ petitioner through his counsel.

(xiv) As regards NJP, this is not a cast iron case where the alleged NJP violation is so obvious, palpable and tangible that it calls for interference by a writ Court.

NJP itself is made up of different hues and shades. Every argument which comes across as a shade of NJP may not qualify as an exception to the alternate remedy rule. It has to be tested on a case to case basis. In the case on hand, as already alluded to supra, it is not so palpable and obvious warranting interference of a writ Court on the teeth of an efficacious alternate remedy which is admittedly available to the writ petitioner. To be noted, pre-deposit of 7.5% is hardly a ground to say that the appeal remedy is not efficacious. This would tantamount to using the writ Court as an alternate forum. Thus, in the considered view of this Court this is clearly impermissible.

7. If the writ petitioner chooses to avail alternate remedy by filing appeal to the Commissioner of Customs (appeals) under Section 128 of said Act, the Appellate Authority shall consider the appeal (subject of course to pre-deposit and limitation) on its own merits and in accordance with law uninfluenced / untrammeled by the observations made in this

order as the observations made in this order is for the limited purpose of disposal of the captioned writ petition.

8. In the light of the narrative, discussion and dispositivie reasoning thus far, curtains are down on the captioned writ petition. The sequitur is captioned Writ Petition fails and the same is dismissed. Consequently, captioned Writ Miscellaneous Petition is also dismissed.

02.01.2023
(2/2)

Index: Yes/No
Speaking / Non-speaking order
Neutral Citation : Yes / No

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To

The Additional Commissioner of Customs
Adjudication - Air
O/o The Principal Commissioner of Customs,
Commissionerate - 1
Chennai Airport
New Custom House
Meenambakkam, Chennai-600 027.

M.SUNDAR, J.,

mk

W.P.No.34206 of 2022
and
W.M.P.No.33654 of 2022
in
W.P.No.34206 of 2022

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(2/2)