IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(113) **CWP-1647-2024**
Decided on : 24.01.2024

M/s HPCL Mittal Energy Limited

……Petitioner(s)

Versus

Union of India and others

……Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amar Pratap Singh, Advocate,
Mr. Ankit Awal, Advocate and
Mr. Shantanu Bansal, Advocate for the petitioner (s).

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G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the show cause notice dated 22.09.2023 (Annexure P-1) alongwith the Circular No.80/54/2018-GST dated 31.12.2018 (Annexure P-15). Resultantly, prayer is made not to take any coercive action against the petitioner during the pendency of the writ petition.

2. Senior Counsel for the petitioner has taken us through the relevant annexures appended in support of the writ petition in an attempt to convince us to exercise our writ jurisdiction under Article 226 of the Constitution of India.

3. During the course of arguments while going through the reply dated 30.11.2023 (Annexure P-28) filed by the petitioner to the show cause, it transpires that in similar circumstances the show cause notice had been issued by the Commissioner, Central Excise & Service Tax, Mangaluru, wherein also the circular dated 31.12.2018 was discussed and also the rate of taxation which was to be done on supply of LPG for domestic use. The bone of

contention as such is that whether 5% tax is to be levied or 18% tax is to be levied for the period from 01.07.2017 to 24.01.2018, which also is the period in the present case. Apparently, keeping in view the justification which was raised by the assessee, the competent authority came to the conclusion while passing the order dated 12.05.2023 that there was no additional liability payable of the GST as demanded in the show cause notice. The demand of interest and proposed penalties thus did not survive, keeping in view the clarification furnished by the Board in various circulars referred to. Resultantly, the authority dropped the proceedings initiated in the show cause notice.

4. The Apex Court in the case of **State of Maharashtra and others Vs. Greatship (India) Limited, 2022 AIR (SC) 4408** has also held that when there is an alternate remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the constitutional provisions. The said observations came to be passed against an order whereby the High Court of Judicature at Bombay had entertained the writ petition against the assessment order and the observations were that the assessee should avail the statutory remedy of appeal and thereafter avail other remedies provided under the statute. The order passed by the High Court was set aside while relegating the assessee to avail the statutory remedy of appeal and other remedies available under the Maharashtra Value Added Tax, 2002 and Central Sales Act, 1956.

5. As noticed in the present case we are only dealing with the show cause notice and the petitioner has already preferred to file its reply, therefore, it would be appropriate if the respondents take a call on the said issue by examining all the defences which have been raised in the reply. A perusal of

the order dated 12.05.2023 passed by the Commissioner at Mangaluru would also go on to show that the circular in question which is subject matter of challenge has already been discussed while dropping the demand. Resultantly, we leave the issue open regarding the challenge to the circular and relegate the petitioner to avail his remedy in accordance with law.

6. The present writ petition stands disposed of with the aforesaid observations.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

24.01.2024
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No