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W.A.No.1231 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1231 of 2021
and C.M.P.No.7853 of 2021

M/s.Alfa Shopping,
rep. by its Proprietor P.Farook,
No.107/A, No.2 Road,
Koranad,
Mayiladuthurai-609 001,
Nagapattinam District.

.. Appellant

vs

The Assistant Commissioner (CT),
Mayiladuthurai -1 Assessment Circle,
Mayiladuthurai,
Nagapattinam District.

.. Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 04.12.2020 passed by the learned Single Judge in W.P.No.3480 of 2016.

For Appellant : Ms.R.Hemalatha

For Respondents : Mr.M.Venkateswaran
Spl. Government Pleader



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JUDGMENT

(Delivered by the Hon'ble Chief Justice)

By the impugned order dated 04.12.2020, a learned Single Judge dismissed the petition relying on a judgment of the Apex Court in ***Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited¹***. According to the learned Single Judge, because the Apex Court in *Glaxo Smith Kline Consumer Health Care Limited* (for short, 'Glaxo Smith Kline') has held that the High Court in exercise of powers under Article 226 of the Constitution of India ought not to have entertained writ petition assailing the order passed by a statutory authority, which was not appealed against within the maximum period of limitation before the concerned appellate authority, the petition cannot be entertained.

2. We would not take the same view as taken by the learned Single Judge. We say this because in *Glaxo Smith Kline* (supra), the Apex Court, after referring to the decision of the Constitution Bench in the case of ***Thansingh Nathmal v. Superintendent of Taxes, Dhubri²***, only held that

1 [2020] 77 GSTR 342 (SC) : (2020) 36 STL 305

2 AIR 1964 SC 1419



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although 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. The Apex Court also observed that the High Court may non-suit the party on the ground that alternative efficacious remedy is available. We find support for this view in a judgment of a Co-ordinate Bench of this Court in the case of ***Mahindra & Mahindra Limited v. Joint Commissioner (CT) Appeals, Chennai and another³***, where paragraphs 4 to 9 read as under:

“4. The learned single judge (Mahindra & Mahindra Limited v. Joint Commissioner (CT) Appeals [2021] 88 GSTR 278 (Mad)) placed reliance on the decision of the honourable Supreme Court in the case of Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited reported in [2020] 77 GSTR 342 (SC) ; (2020) 36 GSTL 305 and in the said decision, it was emphatically laid down that the High Court, in exercise of power under article 226 of the Constitution of India, ought not to have entertained the writ petition assailing the order passed by the statutory authority, which was not appealed against within the maximum period of limitation before the concerned appellate authority.

5. In our respectful view, the decision of the honourable Supreme Court in the said decision has not held that a writ petition under article 226 of the Constitution of India is an absolute bar. We are of the said view after noting the observations/findings rendered by the honourable Supreme Court in the following paragraphs (pages 361, 369, 370 and 372 in 77 GSTR) :

"11. In the backdrop of these facts, the central question is : whether the High Court ought to have entertained the writ petition filed by the respondent ? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under article 226 of the Constitution of India, the

³ 2021 SCC OnLine Mad 16548



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same is no more *res integra*. 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 to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar* AIR 1969 SC 556 and also *Nivedita Sharma v. Cellular Operators Association of India* (2011) 14 SCC 337. In *Thansingh Nathmal v. Superintendent of Taxes, Dhubri* [1964] 15 STC 468 (SC) ; AIR 1964 SC 1419, 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.

.....

15.. .. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court

after expiry of the maximum limitation period of 60 days prescribed under section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three judge Bench of this court in *Oil and Natural Gas Corporation Limited* (2017) 5 SCC 42. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

.....

19.. .. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on September 24, 2018, without substantiating the plea about



inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

6. On a reading of the above extracted paragraphs, it is seen that the honourable Supreme Court, after referring to the decision of the Constitution Bench in the case of *Thansingh Nathmal* [1964] 15 STC 468 (SC), held 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. Further, in paragraph 15, the honourable Supreme Court observed that the High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. In addition, in paragraph 19, the honourable Supreme Court took note of the fact that when the High Court refuses to exercise the jurisdiction under article 226 of the Constitution of India, it would be necessary for the court to record that there was no case of violation of the principles of natural justice or non-compliance of statutory requirements in any manner.

7. Therefore, there are certain broad parameters, within which, the court has to exercise its jurisdiction under article 226 of the Constitution of India, which read as hereunder :

- (i) if there is unfairness in the action of the statutory authority;
- (ii) if there is unreasonableness in the action of the statutory authority;
- (iii) if perversity writs large in the action taken by the authority ;
- (iv) if the authority lacks jurisdiction to decide the issue ; and
- (v) if there has been violation of the principles of natural justice, the court will step in and exercise its jurisdiction under article 226 of the Constitution of India.

8. Further, it would be highly beneficial to refer to the celebrated decision of the Constitution Bench of the honourable Supreme Court in the case of *Mafatlal Industries Ltd. v. Union of India* reported in [1998] 111 STC 467 (SC) ; (1997) 5 SCC 536 wherein it was held that the jurisdiction of the High Courts under article 226 and that of the honourable Supreme Court under article 32 of the Constitution of India could not be circumscribed by the provisions of the Enactment (Central Excise Act) and they would certainly have due regard to the



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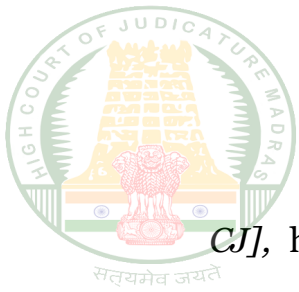
legislative intent evidenced by the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the Act. Further, the court directed that the writ petition would be considered and disposed of in the light of and in accordance with the provisions of section 11B of the Central Excise tax Act and for such a reason, the power under article 226 of the Constitution of India has to be exercised to effectuate rule of law and not for abrogating it.

9. In the light of the above, we have no hesitation to hold that the observation of the learned single judge (*Mahindra & Mahindra Limited v. Joint Commissioner (CT) Appeals [2021] 88 GSTR 278 (Mad)*) to the effect that there is absolute bar for entertaining a writ petition does not reflect the correct legal position. Hence, we are inclined to interfere with the observation made in the impugned order.”

3. Moreover, in paragraph 15 of *Glaxo Smith Kline* (supra), it says “..... However, if writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course”.

4. After referring to various judgments of the Apex Court, in ***Hindalco Industries Limited v. Union of India and another***⁴, a Division Bench of Bombay High Court [to which one of us is a Member – K.R.Shriram,

4 (2024) 464 ITR 236



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CJ], held that “... principle of advancing substantial justice is of prime importance and while considering the question of condonation, the revisional authority is not all together excluded from considering the merits of the revision petition”.

5. In *Angel Educational Trust and others v. Kotak Mahindra Bank*

Ltd. and others⁵, this Court held as under:

“5. Delay is condoned to enable doing substantial justice to the parties. By delaying the filing of the appeal, petitioners did not stand to benefit. If we do not condone the delay, there is a possibility that a meritorious matter may be thrown out at the very threshold and the cause of justice could be defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

6. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate action. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. The approach of the authority should be justice-oriented so as to advance cause of justice. If the case of an applicant is genuine, mere delay should not defeat the claim.”

[emphasis supplied]

6. In the light of the law enunciated, if we accept what the learned Single Judge has said, then it would amount to a situation that the limitation period not prescribed under Article 226 is inserted just because

⁵ C.R.P.No.4187 of 2024 dated 23.10.2024



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there was a limitation period prescribed in the Tamil Nadu Value Added Tax Act, 2006.

7. For the foregoing reasons, the appeal is allowed and impugned order dated 04.12.2020 is hereby quashed and set aside. The matter is remanded to the learned Single Judge for *de novo* consideration of the writ petition. There shall be no order as to costs. Consequently, interim application stands closed.

(K.R.SHRIRAM, C.J.)

(MOHAMMED SHAFFIQ J.)

04.02.2025

Index : Yes/No
NC : Yes/No
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To:

The Assistant Commissioner (CT),
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THE HON'BLE CHIEF JUSTICE
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