IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 5648 of 2020
Reserved on : 29.12.2020
Decided on : 1 .1.2021

M/s Radha Krishan Industries ...Petitioner.

Versus

State of H.P. and others

...Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Ms Justice Jyotsna Rewal Dua, Judge.

[1] *Whether approved for reporting?. yes*

For the petitioner: Mr. Puneet Bali, Sr. Advocate with Mr. Jyotirmay Bhatt, Advocate.

For the respondents: Mr. Ajay Vaidya, Sr. Addl. A.G.

Tarlok Singh Chauhan, Judge

The instant petition has been filed for the grant of following substantive reliefs:

a) Issue a writ petition under Article 226 of the Constitution of India in the nature of Certiorari quashing impugned order dated 21.10.2020 (Annexure P-1) passed by the Commissioner, respondent No.2 delegating his powers absolutely, being inter alia, illegal, arbitrary, misconceived, erroneous and even violative of principles of natural justice, equity and fair play.

b) Issue a civil writ petition under Article 226 of the Constitution of India in the nature of certiorari quashing the proceedings initiated by the respondent No.3 under section 83 by provisionally attaching the amount receivable by the petitioner

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

from its customer while issuing Form DRC-22 to M/s Deepak International Limited vide Memo No. EXN-JCSTE/SEZ-Parwanoo/2020-21/1171 dated 28.10.2020 (Annexure P-2) and to M/s Fujikawa Power vide Memo No. EXN-JCSTE/SEZ-Parwanoo/20209-21/1167 dated 28.10.2020 (Annexure P-3) being inter alia, illegal, arbitrary, misconceived, erroneous and even violative of principles of natural justice equity and fair play.

c) Issue a writ in the nature of mandamus, directing the respondent No.3 to revoke the provisional attachment and not to resort to further coercive measures against the petitioner.

2. A detection case under section 74 of the Himachal Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the 'GST Act' for short) and the Central Goods and Services Tax Act, 2017 read with section 20 of the Integrated Goods and Services Tax Act, 2017 was conducted against one of the suppliers of M/s Radha Krishan Industries, Kala-Amb, i.e. M/s GM Powertech, Kala-Amb on 10.10.2018 by way of search and seizure as provided under section 67 of the HPGST/CGST Acts. A show cause notice dated 9.1.2019 (Annexure P-8) was issued to M/s Fujikawa Power, Bagbania, BBN Baddi regarding provisional attachment of payment of the petitioner under section 83 of the Act. In response to the show cause notice, the petitioner filed representation dated 29.1.2019 (copy enclosed as Annexure R-1) and respondent

No.3 vide letter dated 30.1.2019 (Annexure P-9) withdrew the aforesaid notice. However, after initial inquiry into the matter, evidences of tax evasion were detected and M/s GM Powertech, Kala-Amb claimed and utilized input tax credit on account of the invoices issued by the fake/fictitious firms without actual movement of goods from the fake firms. Similarly, M/s GM Powertech also issued invoices on the same analogy to various recipients situated in the state of Himachal Pradesh including the petitioner. Consequently, respondents issued provisional attachment of the payment receivable by the petitioner; vide Annexures P-2 and P-3.

3. Mr. Ajay Vaidya, learned Sr. Addl. Advocate General has questioned the very maintainability of this petition on the ground of availability of alternative remedy.

4. Learned counsel for the petitioner does not dispute that there is alternative remedy available by way of appeal under section 107 of the GST Act with respect to the Annexures P-2 and P-3 issued by respondent No.3. However, he would contend that the rule of exclusion of jurisdiction due to availability of alternative remedy is a rule of discretion and not one of the compulsions. He would further contend that inspite of alternative remedy; the writ court may in an

appropriate case exercise its discretionary jurisdiction of judicial review, especially in the following cases:

i) Where the writ petition is filed for the enforcement of any of the fundamental rights; or

ii) where there is a violation of the principles of natural justice; or

iii) where the order or proceedings are wholly without jurisdiction *or* the vires of an Act is challenged; or

iv) where the statutory authority has not acted in accordance with the provisions of the enactment in question; or

v) in defiance of the fundamental principles of judicial procedure, or

vi) has resorted to invoke the provisions which are repealed, or

vii) when an order has been passed in total violation of the principles of natural justice,

5. It is not in dispute that respondent No.3 and the Divisional Commissioner, who has been appointed as Commissioner (Appeals) under the GST Act, are constituted under the Act and therefore, it is assumed that there is no illegal or irregular exercise of jurisdiction and the same would not result in the order being without jurisdiction. Even if there is some defect in the procedure followed during the hearing of the case, it does not follow that the authority acted without jurisdiction. It may make the order irregular or defective but the order cannot be a nullity so long it has been passed by the authority, which is competent to pass the

order. There is a basic difference in between want of jurisdiction or irregular exercise of jurisdiction and if there is non-compliance of procedure, the same cannot be a ground for granting one of the writs prayed for. The defect, if any, can according to the procedure established by law, be corrected only by a court of appeal or revision.

6. In drawing this conclusion, we are fortified by the following judgments of this Court : ***Indian Technomac Company Ltd***. vs ***State of H.P. and others***, CWP No. 4779 of 2014 and analogous matters decided on 4.8.2014, which in turn has been followed in M/s ***Samsung India Electronics Pvt Ltd***. vs ***State of H.P. and others***, ILR 2015 (3) HP 226 and both these judgments in turn have been followed in ***Micromax Informatics Ltd.*** vs ***State of H.P. and others***, 2015 (3) SLC 1293.

7. At this stage we only need to refer to the later judgment in ***Micromax's*** case (supra), the relevant portion reads thus:

> "[10] Thus, the petitioners have efficacious remedy available, as per the mandate of Section 48 of the Act.
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> [11] It is beaten law of the land that when the efficacious remedy is available, the writ petition is not maintainable.
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> [12] This Court in batch of writ petitions, the lead case of

which is CWP No. 4779 of 2014 titled M/s Indian Technomac Company Ltd. versus State of H.P. & others decided on 4.8.2014, held that the petitions are not maintainable. It is apt to reproduce paras 11 to 14, 16 and 18 of the said judgment herein:

"11. Now, the question which arises for determination is when an Act provides mechanism to have remedy(ies), can a writ lie in the given circumstances? The answer is in the negative for the following reasons. It is well settled principle of law that High Courts have imposed rule of self limitation in entertaining the writ petition in terms of writ jurisdiction when alternative remedy is available.

High Court must not interfere if there is adequate efficacious alternative remedy available and the practice of approaching the High Court, without availing the remedy(ies) provided, must be deprecated, unless express case is made out.

12. The Apex Court in Union of India and another vs. Guwahati Carbon Limited, 2012 11 SCC 651, while dealing with the similar question, has observed in paragraphs 8, 9, 10, 11, 14 and 15 as under:

"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta, 1979 AIR(SC) 1250 In the said decision, this Court was pleased to observe that: (SCC p.88, para 23)

"23. . when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner and all the -other forums and modes of seeking remedy are excluded."

9. A Bench of three learned Judges of as Court, in Titaghur Paper Mills Co. Ltd. v. State of Orissa, 1983 2 SCC 433, held: (SCC p.440, para 11)

"11.....The Act provides for a complete-machinery to challenge an order of assessment, and the impugned orders of

assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where right or liability is created by a statute which gives a special remedy for 1 enforcing it, the remedy provided by that statute must be availed...."

10. In other words, existence of an adequate alternate remedy is a factor to be considered by the writ court before exercising its writ jurisdiction (See Rashid Ahmed v. Municipal Board, Kairana, 1950 SCR 566).

11. In Whirlpool Corpn. v. Registrar of Trade Marks, 1998 8 SCC 1, this Court held:

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of the Fundamental Rights or where there has been a violation of the principle of natural justices or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged....." xxxxxxxxxxx xxxxxxxxxxx

14. Having said so, we have gone through the orders passed by the Tribunal. The only determination made by the Tribunal is with regard to the assessable value of the commodity in question by excluding the freight/ transportation charges and the insurance charges from the assessable value of the commodity in question. Since what was done by the Tribunal is the determination of the assessable value of the commodity in question for the purpose of the levy of duty under the Act, in our opinion, the assessee ought to have carried the matter by way of an appeal before this Court under Section 35L of the Central Excise Act, 1944.

15. In our opinion, the assessee ought not to have filed a writ petition before the High Court questioning the correctness or otherwise of the orders passed by the Tribunal. The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution. Therefore, the learned Single Judge was justified in observing that since the assessee has a remedy in the form of a right of appeal under the statute, that remedy must be exhausted first. The order passed by the learned Single Judge, in our opinion, ought not to have been interfered with by the Division Bench of the High Court in the appeal filed by the respondent/assessee."

13. The Apex Court in Nivedita Sharma vs. Cellular Operators Association of India and others,2011 15 SCC 337, after discussing its various earlier decisions, held that the High Court had committed error in entertaining the writ petition without noticing and referring to the relevant provisions of law applicable in that case, which contained statutory remedy of appeal and accordingly set aside the order of the High Court in terms of which the writ petition was entertained. It is apt to reproduce paragraphs 24 and 25 hereunder:

"24. Section 19 provides for remedy of appeal against an order made by the State Commission in exercise of its powers under sub-clause (i) of Clause (a) of Section 17. If Sections 11, 17 and 21 of the 1986 Act which relate to the jurisdiction of the District Forum, the State Commission and the National Commission, there does not appear any plausible reason to interpret the same in a manner which would frustrate the object of legislation.

25. What has surprised us is that the High Court has not even referred to Sections 17 and 19 of the 1986 Act and the law laid down in various judgments of this Court and yet it has declared that the directions given by the State Commission are without jurisdiction and that too by overlooking the availability of

statutory remedy of appeal to the respondents."

14. The Apex Court in a recent decision in Commissioner of Income Tax and others vs. Chhabil Dass Agarwal, 2014 1 SCC 603, has discussed the law, on the subject, right from the year 1859 till the date of judgment i.e. 8th August, 2013. We deem it proper to reproduce paragraphs 12, 13, 15, 16 and 17 hereunder:

"12. The Constitution Benches of this Court in K.S. Rashid and Sons vs. Income Tax Investigation Commission, 1954 AIR(SC) 207 Sangram Singh vs. Election Tribunal, 1955 AIR(SC) 425 Union of India vs. T.R. Varma, 1957 AIR(SC) 882 State of U.P. vs. Mohd. Nooh, 1958 AIR(SC) 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, 1966 AIR(SC) 1089 have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. (See: N.T. Veluswami Thevar vs. G. Raja Nainar, 1959 AIR(SC) 422 Municipal Council, Khurai vs. Kamal Kumar, 1965 2 SCR 653; Siliguri Municipality vs. Amalendu Das, 1984 2 SCC 436; S.T. Muthusami vs. K. Natarajan, 1988 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, 1995 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, 2000 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan, 2000 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., 2001 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj); Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra, 2001 8 SCC 509; Pratap Singh vs. State of Haryana, 2002 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, 2003 1 SCC 72).

13. In Nivedita Sharma vs. Cellular Operators Assn. of India, 2011 14 SCC 337, this Court has held that where hierarchy

of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: (SCC pp.343-45 paras 12-14)

"12. In Thansingh Nathmal v. Supdt. of Taxes, 1964 AIR(SC) 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (p AIR(1423) para 7).

'7. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.'

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa, 1983 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11) '11. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford, 1859 141 ER 486 in the following passage: (ER p. 495)

" There are three classes of cases in which a liability may be established founded upon a statute. But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by

the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd., 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd., 1935 AC 532 (PC) and Secy. of State v. Mask and Co., 1940 AIR(PC) 105 It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.'

14. In Mafatlal Industries Ltd. v. Union of India, 1997 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

'77. So far as the jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.'" (See: G. Veerappa Pillai v. Raman & Raman Ltd., 1952 AIR(SC) 192 CCE v. Dunlop India Ltd., 1985 1 SCC 260; Ramendra Kishore Biswas v. State of Tripura, 1999 1 SCC 472; Shivgonda Anna Patil v. State of Maharashtra, 1999 3 SCC 5; C.A. Abraham v. ITO, 1961 2 SCR 765; Titaghur Paper Mills Co. Ltd. v. State of Orissa, 1983 2 SCC 433; H.B. Gandhi v. Gopi Nath and Sons, 1992 Supp2 SCC 312; Whirlpool Corpn. v. Registrar of Trade Marks, 1998 8 SCC 1; Tin Plate Co. of India Ltd. v. State of Bihar, 1998 8 SCC 272; Sheela Devi v. Jaspal Singh, 1999 1 SCC 209 and Punjab National Bank v. O.C. Krishnan, 2001 6 SCC 569)

14. In Union of India vs. Guwahati Carbon Ltd., 2012 11 SCC 651, this Court has reiterated the aforesaid principle and observed: (SCC p.653, para 8)

"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta, 1979 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

'23. when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.'"

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15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal v. Supdt. of Taxes, 1964 AIR(SC) 1419 Titagarh Paper Mills, 1983 SCC(Tax) 131 and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the

jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, 1985 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case. In light of the same, we are of the considered opinion that the Writ Court ought not to have entertained the Writ Petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the re-assessment orders passed and the consequential demand notices issued thereon."

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16. The sum and substance of the above discussion is that the writ petitioners-Company have remedies of appeal(s), before approaching the High Court by way of the writ petitions, for the redressal of their grievances. The petitioners ought to have exhausted the remedy of appeal before the Deputy Excise and Taxation Commissioner or Additional Excise and Taxation Commissioner or the Excise Commissioner, as the case may be, and if the petitioners were not successful in those appeal proceedings, another remedy available to them was to challenge the said order(s) by the medium of appeal before the Tribunal, and again, if they were unsuccessful, they could have availed the remedy of revision before the High Court in terms of Section 48 of the HP VAT Act, 2005. Keeping in view the above discussion, read with the fact that the dispute raised in these writ petitions relates

to revenue/tax matters, it can safely be concluded that the petitioners have sufficient efficacious remedy(ies) available.

17 .. .

18. Having said so, we are of the considered view that the writ petitioners have alternative efficacious remedy available and these writ petitions are not maintainable. Accordingly, the same merit to be dismissed in limine. However, it is made clear that the observations made herein shall not cause any prejudice to the petitioners in case they intend to file appeal(s) before the prescribed Authority and the period spent by the petitioners for prosecuting these writ petitions shall be excluded by the Appellate Authority while computing the period of limitation."

[18] The apex Court in case titled Union of India and others versus Major General Shri Kant Sharma and another, 2015 AIR(SCW) 2497) has also held that in the given circumstances, the writ petition is not maintainable. It is apt to reproduce paras 34, 37 and 38 of the said judgment herein:

"34. The aforesaid decisions rendered by this Court can be summarised as follows:

The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India.(Refer: L. Chandra and S.N. Mukherjee).

(ii)The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act.(Refer: Mafatlal Industries Ltd.).

(iii)When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma).

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma).

35-36 . .. ..

37. Likelihood of anomalous situation If the High Court entertains a petition under Article 226 of the Constitution of India against order passed by Armed Forces Tribunal under Section 14 or Section 15 of the Act bypassing the machinery of statute i.e. Sections 30 and 31 of the Act, there is likelihood of anomalous situation for the aggrieved person in praying for relief from this Court.

Section 30 provides for an appeal to this Court subject to leave granted under Section 31 of the Act. By clause (2) of Article 136 of the Constitution of India, the appellate jurisdiction of this Court under Article 136 has been excluded in relation to any judgment, determination, sentence or order passed or made by any court or Tribunal constituted by or under any law relating to the Armed Forces. If any person aggrieved by the order of the Tribunal, moves before the High Court under Article 226 and the High Court entertains the petition and passes a judgment or order, the person who may be aggrieved against both the orders passed by the Armed Forces Tribunal and the High Court, cannot challenge both the orders in one joint appeal. The aggrieved person may file leave to appeal under Article 136 of the Constitution against the judgment passed by the High Court but in view of the bar of jurisdiction by clause (2) of Article 136, this Court cannot entertain appeal against the order of the Armed Forces Tribunal. Once, the High Court entertains a petition under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal under Section 30 with leave to appeal under Section 31 of the Act

against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court under Article 226 of the Constitution under Section 30 read with Section 31 of the Act.

Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition under Article 226 of the Constitution bypassed the machinery created under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions under Article 226 and directed the writ petitioners to seek resort under Sections 30 and 31 of the Act.

Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition under Article 226 of the Constitution of India."

8. The Hon'ble Supreme Court has in one of its latest judgments in ***Assistant Commissioner (CT) LTU, Kakinada and others*** vs ***Glaxo Smit Kline Consumer Health Care Limited***, AIR 2020 SC 2819 held that even though the High Court can entertain writ petition against any order or direction passed or action taken by State under Article 226 of the Constitution of India, but it has not to do so as a matter of course when aggrieved person

could have availed the effective alternative remedy in the manner prescribed by law. Reference in this regard can be made to the observations as contained in para 11, which read as under:

> [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 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 vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, 1969 AIR(SC) 556 and also Nivedita Sharma vs. Cellular Operators Association of India & Ors., 2011 14 SCC 337). In Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors., 1964 AIR(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. In paragraph 7, the Court observed thus: -
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> "7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial

Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the Taxing Authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

(emphasis supplied)

We may usefully refer to the exposition of this Court in Titaghur Paper Mills Co. Ltd. & Anr. Vs. State of Orissa & Ors., 1983 2 SCC 433 , wherein it is observed that where a right or

liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of. In paragraph 11, the Court observed thus: -

"11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford, 1859 6 CBNS 336 [, 356] in the following passage:

There are three classes of cases in which a liability may be established founded upon statute. . . . But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd., 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd., 1935 AC 532 and Secretary of State v. Mask & Co., 1940

AIR(PC) 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

(emphasis supplied)

In the subsequent decision in Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors., 1997 5 SCC 536, this Court went on to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute."

9. Thus, what can be deduced from the aforesaid exposition of law is that the Hon'ble Supreme Court has recognized some exception to the rule of alternative remedy, i.e. where the statutory authority has not acted in accordance with the provisions of the Act or in defiance the fundamental principles of judicial procedure or has resorted to invoke the provisions, which are repealed or where an order has been passed in total violation of the principle of natural justice, but the High Court will not entertain a petition under Article 226 of the Constitution of

India, if efficacious remedy is available to the aggrieved person or where the statute under which the action complained of has been taken in mechanism for redressal of grievance still holds the field. Meaning thereby, that when a statutory form is created by law for redressal of grievance, a writ petition should not be entertained ignoring the statutory dispensation.

10. Having said so, we are of the considered view that the writ petitioner has not only efficacious remedy, rather alternative remedy under the GST Act, and therefore, the present petition is not maintainable.

11. Lastly and importantly, we find that the writ petition filed by ***M/s GM Powertech***, the company against whom same and similar allegations, as have been levelled against the petitioner herein, being CWP No. 5462 of 2020, has not been entertained and the company has been relegated to avail of the alternative remedy vide judgment dated 7.12.2020.

12. Accordingly the present petition is dismissed. However, it is made clear that the observations made herein above shall not cause any prejudice to the petitioner

in case he intends to file an appeal before the prescribed authority and it is further made clear that the period spent in prosecuting this writ petition shall be excluded by the authority while computing the period of the limitation. The parties are left to bear their own costs. Pending application(s), if any, also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua)
Judge

1. 1.2021
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