2025:CGHC:16083

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 84 of 2024

Judgement Reserved on- 18.07.2024

Judgement Delivered on 04 -04-2025

1 - Mayasheel Retail India Limited Erstwhile Gstin 22aalcm8166f1zc And Registered Office At Showroom No. 72, Transport Nagar, Korba- 495677, Also Registered In Other State With Gstin 06aalcm8166f1z6 And Registered Office At Plot No. 88, Sector 35, Begampur Khatola, Gurugram, Haryana- 122001, Through Director Mr. Atul Garg S/o Mr. Sushil Kumar Garg Age 46 Years R/o Apartment No. 18/b, Tower - Fe-01, 18th Floor, M3m Golf Estate, Golf Course Extension, Sector-65, Bhondsi Gurgoan, Haryana- 122102.

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through Secretary Commercial Tax, Mantralaya Mahanadi Bhawan, Atal Nagar, Naya Raipur Chhattisgarh

2 - Joint Commissioner Of State Tax Bilaspur Division I I, Collectorate Campus, Iti Rampur, Korba, Chhattisgarh- 495677.

3 - Assistant Commissioner Of State Tax Bilaspur Division I I, Circle Korba - I, Collectorate Campus, Iti Rampur, Korba, Chhattisgarh- 495677.

... Respondent(s)

For Petitioner(s)	:	Mr. Kashish Kumar Gupta, Advocate
For Respondent(s)	:	Mr. Anurag Tripathi, Panel Lawyer

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

CAV Order

1. By the present petition, the petitioner has challenged the demand order dated 11.01.2021 along with Form DRC-07 dated 15.01.2021 issued by respondent No. 3, wherein it has been stated that the demand order came to the knowledge of the petitioner pursuant to the issuance of recovery notice dated 27.02.2024.

2. Learned counsel for the petitioner would submit that the impugned order has been issued without issuing a show cause notice u/s 73 of the Central Goods and Service Tax Act, 2017 (in short "CGST Act") and without scheduling a personal hearing in the matter. Even the summary of show cause notice was issued in Form GST DRC-01 through e-mail, which is not a prescribed mode of service. That petitioner gained knowledge about the issuance of the impugned order pursuant to the issuance of impugned notice for recovery, on 29.02.2024. Further, it has been submitted that, even otherwise, the assessment qua issue adjudicated in the impugned order dated 11.01.2021 has been re-opened by the Respondent No. 3 by way of issuing scrutiny notice in Form GST ASMT-10 dated 05.01.2024 and notice in Form GST DRC-01 dated 30.01.2024. The petitioner duly participated in said re-opened proceedings by way of submitting his representation(s) and Respondent No. 3 dropped the demands qua said issue in entirety, after considering the representations made by the petitioner. Therefore, the petitioner has filed this petition since respondent No. 3 is not withdrawing the impugned order dated 11.01.2021 as well as the consequential impugned notice for recovery dated 27.02.2024.

3. Further, it would argued that no personal hearing was granted to the petitioner prior to the issuance of the impugned order dated 11.01.2021 and 15.01.2021. It has been further submitted that the reasonable opportunity of hearing, as provided under the Act, means personal hearing to the petitioner which is absent in the case at hand. With regard to the maintainability of writ

petitions, he places reliance upon the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise vs. Singhai Sushil Kumar reported in (2016) 13 SCC 223**

4. Per contra learned Counsel for the State would submit that that the petitioner had statutory efficacious alternative remedies available to him which is suppressed by the petitioner in his petition at para 5 of the petition. It is respectfully submitted that the present petition as framed and filed by the petitioner is not maintainable and therefore the same deserves to be dismissed as the petitioner has directly rushed to this Hon'ble Court without exhausting the statutory efficacious alternative remedy of approaching the competent authority against the order impugned as per the provisions of section 107 of the Chhattisgarh Goods & Services Tax Act, 2017.

5. I have heard learned counsel for the parties and perused the documents placed on record with utmost circumspection.

6. Before dilating on the ground urged by the writ petitioner, it is appropriate to deal with the issue about the situations when despite the availability of an alternative and efficacious statutory remedy, a writ petition under Article 226 can be entertained. Chapter XVIII of the CGST Act, 2017 contains the provisions for appeal and revision. As per sub-section (1) of Section 107, any person aggrieved by any decision or order passed under the CGST Act, 2017 or the SGST Act, 2017, by an Adjudicating Authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person. The Order-in-Original in the present case has been issued on 11.01.2021 and 15.01.2021 and indisputably it is an appealable order under sub-section (1) of Section 107 of the CGST Act, 2017. The petitioner instead of preferring such an appeal has preferred the instant writ petition.

7. It is settled that the availability of an alternative remedy does not always operate as a bar to the maintainability of a writ petition under Article 226 of the Constitution of India. Even if a writ petition is maintainable, the High Court

in its extra-ordinary and discretionary jurisdiction may not entertain a writ petition. The distinct concepts of 'maintainability' and 'entertainability' have been succinctly explained by the Hon'ble Supreme Court of India in "**M/s Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority and others**", reported in **(2023) 3 SCR 871**. It has been observed that Article 226 of the Constitution of India does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. Exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot be construed as a ground for its dismissal. It has been observed that the High Courts, bearing in mind the facts of each particular case, have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it is required to be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition 'not maintainable'. Availability of an alternative remedy does not operate as an absolute bar to the 'maintainability' of a writ petition. It has, thus, been observed that 'entertainability' and 'maintainability' of a writ petition are distinct concepts. While an objection to the 'maintainability' goes to the root of the matter, the question of 'entertainability' is entirely within the realm of discretion of the High Courts. Being otherwise maintainable, it has been enunciated that dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without examining the aspect of

whether an exceptional case has been made out for such entertainment would not be proper.

8. Having regard to the distinct concepts of maintainability and entertainability, there is no doubt that the instant writ petition is maintainable under Article 226 of the Constitution of India. The issue herein is, thus, whether this writ petition should be entertained or not in the backdrop of the obtaining fact situation. After making a survey of a large number of precedents especially in revenue/tax matters, the Hon'ble Supreme Court of India in the case titled ***Commissioner of Income Tax and others vs. Chhabil Dass Agarwal , reported in [2014] 1 SCC 603***, has observed as under:-

> 11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226**.**

9. The Constitution Benches of the Hon’ble Supreme Court in **“K.S. Rashid and Sons vs. Income Tax Investigation Commission” AIR 1954 SC 207, “Sangram Singh vs. Election Tribunal, Kotah” AIR 1955 SC 425, “Union of India vs. T.R. Verma” AIR 1957 SC 882, “State of U.P. vs. Mohd. Nooh” AIR 1958 SC 86 and “K.S. Venkatraman and Co. (P) Ltd. vs. State of Madras” AIR 1966 SC 1089** have held that though Article 226 confers very wide power in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have 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 a decision has not been adopted. **("See N.T. Veluswami vs. G. Raja Nainar" AIR 1959 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. Natrajan" 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 Dugdh Utpadak Sanstha vs. State of Maharashtra" 2001 (8) SCC 509; "Pratap Singh vs. State of Haryana" 2002 (7) SCC 484; and "GKN Driveshaft (India) Ltd. vs. ITO", 2003 (1) SCC 72**).

10. 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 invoking 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" and "Titaghur Paper Mills" case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution of India 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 the redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

11. The statutory prescriptions contained in the Statute, that is, the CGST Act, 2017, makes it evident that the notices or orders passed under the provisions

of Section 73 of CGST Act, 2017 can be served upon the noticee/assessee under any of the modes prescribed therein and such notice or order shall be deemed to have been served on the date on which it is tendered or published. Service of the notice or the order, as the case may be, under Section 73, CGST Act, 2017, by giving or tendering it directly or by a messenger to the taxable person or the addressee, etc. in the manner, is a statutorily permissible mode of service. By making the notice or the order available on the common portal is another statutorily permissible mode of service.

12. In the case of ***Assistant Commissioner of State Tax & Ors. Versus M/s Commercial Steel Limited reported in 2021 7 SCR 660,*** the Hon'ble Apex Court has observed that respondents therein had a statutory remedy under Section 107 of the CGST Act. Relevant paras are reproduced herein below:-

> *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.*
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> *13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case.*

13. In view of the discussion made above and for the reasons assigned therein, this Court is of the unhesitant view that the petitioner has not been able to make out any exceptional case to interfere with the impugned order in the

extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India. In such view of the matter, this Court has found that the instant writ petition is not to be entertained. It is accordingly held.

14. It is, however, made clear that the observations made hereinabove are only for the purpose of examining whether the writ petition on the basis of the grounds urged/pleaded, is to be entertained or not. It is clarified that non-entertainment of the writ petition shall not preclude the writ petitioner from raising all contentions on facts and law before the statutory appellate authority and none of the observations made herein shall be construed to be observations on merits of the claims of the petitioner. If the petitioner prefers a statutory appeal under Section 107 of the Act, 2017, the appellate authority shall take into consideration the factum of preferring the instant writ petition and the time period spent, while considering the issue of limitation.

15. With the aforesaid observation(s) and direction(s), the writ petition stands disposed of.

Sd/-
(Ravindra Kumar Agrawal)
Judge

sagrika