IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11472 OF 2024

Pragati Gold Pvt. Ltd. ...Petitioner

Versus

Union of India & Ors. ...Respondents

Dr. Abhinav Chandrachud a/w Mr. Anurag Abhishek (through VC), Ms. Pooja Shah, Ms. Nirjala Mishra i/b. Mr. Tushar D. Kale for Petitioner.
Mr. Karan Adik a/w Ms. Kavita Shukla for Respondents.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

DATED : 16 December 2024

PC.:- *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. The challenge in this petition is to the Order-in-Original (O-I-O) dated 24 August 2023 made by the Commissioner of Customs (II) Airport Special Cargo, Andheri (E), Mumbai.

3. The covering letter under which the impugned order was forwarded to the Petitioner clearly states that this order is appealable to the Customs Excise and Service Tax Appellate Tribunal (CESTAT). Despite this, the only averment in the context of the alternate remedy is found in paragraph 18 of the petition, which reads as follows:-

> *"18. The Petitioner has no other alternative efficacious remedy available for the redressal of his grievances except by way of the present petition and this Hon'ble Court has the requisite territorial jurisdiction to try and entertain this Writ Petition."*

4. The above averment is misleading, and based upon the same, the usual practice of requiring the parties to exhaust the alternate statutory remedies cannot be bypassed.

5. Dr. Chandrachud, however, submitted that the finding about almost 259 gold consignments was perverse and based on no evidence as opposed to insufficient evidence. He submitted that the impugned order, after taking cognisance of 4 consignments in respect of which some problems were detected, has concluded that the remaining 259 consignments were also suspect and, based upon the same, has demanded a duty of Rs.83.18 crores. He submitted that an appeal requires a pre-deposit of 7.5% of the duty demanded, and it would not be possible for the Petitioner to arrange for this pre-deposit amount.

6. Dr. Chandrachud, relying upon ***Syed Irfan Mohammed vs. Union of India***[1]***,*** submitted that once the adjudication regarding a certain assignment was completed, there was no question of re-opening such assessment. He submitted that in such circumstances, a petition attempting to re-open such consignment was entertained without adverting to the practice of alternate remedy. He emphasized paragraphs 16 and 17 of the said order.

7. Dr. Chandrachud submitted that this was a case where the statutory authority had not acted in accordance with the provisions of the enactment and, therefore, based upon the decision in ***Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal***[2], this writ petition was entertainable without relegating the Petitioner to any alternate remedy of appeal. He also relied on ***Radha Krishan Industries vs. State of Himachal Pradesh***[3] to submit that the Petitioner's case falls within the exceptions to the rule of alternate remedy.

8. For all the above reasons, Dr. Chandrachud submitted that this Court should entertain this petition instead of relegating the Petitioner to the alternate remedy.

1 2016 SCC OnLine Hyd 826
2 (2014) 1 SCC 603
3 (2021) 6 SCC 771

9. Mr. Adik submitted that no exceptional circumstances arise in this petition and, therefore, the normal rule of exhausting alternate remedies should not be bypassed. He pointed out that the Petitioner, for the relevant year itself, had a turnover of about Rs.485 crores; therefore, the contentions about the inability to arrange the pre-deposit amount are incorrect. He submitted that there was ample evidence on record that the duty demanded is based upon the evidence referred to by the learned counsel for the Petitioner. In any event, he submitted that all these matters could have been agitated in an appeal. He pointed out that no appeal was instituted for reasons best known to the Petitioner, and this Court, exercising its jurisdiction under Articles 226 and 227 of the Constitution of India, should not undermine the statutory regime in such matters.

10. The rival contentions now fall for our determination.

11. At the outset, we note that the only averment in the petition in the context of alternate remedy was found in paragraph 18. This averment is misleading, and based on the same, there is no question of exercising any discretion favoring the Petitioner. The contention about the finding about 259 assignments being perverse can be raised in the appeal. By simply styling some findings as perverse, there is no question of bypassing the alternate and efficacious statutory remedies available.

12. In ***Radha Krishan Industries (supra)*** relied upon by Dr. Chandrachud, it is held that the exceptions to the rule of alternate remedy arise where the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution or there has been a violation of the principles of natural justice, or the order or proceedings are wholly without jurisdiction, or the vires of legislation is challenged.

13. In this case, there is no question of enforcement of the Petitioner's fundamental right protected by Part-III of the Constitution. There is no violation of the principles of natural justice alleged. The impugned order or the proceedings in which the order was made cannot be styled as wholly without jurisdiction. The vires of no legislation have been challenged in this petition. Instead, this decision holds that when a right is created by statute that prescribes the remedy or procedure for enforcing the right or liability, the resort must be held to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion. This decision further holds that in cases where there are disputed questions of fact, the High Court may decline jurisdiction in a writ petition. The decision in ***Radha Krishan Industries (supra),*** apart from not supporting the case of the Petitioner, persuades us not to exercise discretion in favour of the Petitioner by entertaining this petition.

14. Similarly, in ***Chhabil Dass Agarwal (supra)***, the Hon'ble Supreme Court interfered with the decision of the High Court to entertain a petition under Article 226 of the Constitution of India despite an alternate remedy. The Court held that the High Court must not interfere if an adequate and efficacious alternative remedy is available to the Petitioner unless an exceptional case warranting interference is made out or sufficient grounds exist to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. The Court noted that neither had the Petitioner-Assessee pleaded that the available alternative remedy under the Income Tax Act was ineffectual or non-efficacious, nor had the High Court given cogent and satisfactory reasons to exercise its jurisdiction. The Court has held that

as the Income Tax Act provides complete machinery for assessment / re-assessment of tax against any improper orders passed by the Revenue Authorities, the assessee is not permitted to abandon that machinery to invoke jurisdiction of the High Court under Article 226 of the Constitution of India when he had adequate remedy open to him by filing an appeal.

15. The issue of whether the statutory authority has not acted in accordance with the provisions of the enactment in question will have to be examined in the context of the facts and other material on record. These are disputed questions of facts and would involve appreciation and evaluation of the material on record. It is too premature to hold that this is a case of perversity. Therefore, based upon ***Chhabil Dass Agarwal (supra),*** no case is made out to bypass the rule or practice of exhaustion of alternate remedies.

16. The decision of ***Syed Irfan Mohammed (supra)*** *prima facie* turns on its own facts, which are not comparable to the facts in the present case. In any event, we do not wish to even remotely foreclose any of the Petitioner's or Respondents' contentions should the Petitioner institute an appeal against the impugned order. All that we say is that this is not some clear case involving breach of any statutory provisions, or this is not a case where we can say that the impugned order or proceedings in which the impugned order was made wholly without jurisdiction and bypass statutory remedies available to the Petitioner to challenge the impugned order.

17. Even determination of the issue regarding breach of statutory provisions would involve an investigation into factual aspects and the evaluation of the material placed by both parties on record. In ***Syed Irfan Mohammed (supra)***, oral statement made by the Petitioner, which

they had retracted immediately, formed the basis for concluding that the wrongdoer of the present could have been a wrongdoer in the past. In this peculiar circumstance, the challenge to the order impugned in the said matter was entertained without insisting upon the Petitioner availing of the alternate statutory remedies. In any case, this order does not refer to any decisions of the Supreme Court on the exhaustion of alternate remedies.

18. In ***Oberoi Constructions Limited vs. Union of India and Ors., Writ Petition (L) No.33260 of 2023,*** disposed on ***11 November 2024***, we have surveyed several precedents on the practice of exhaustion of alternate remedies. By adopting the reasoning in the said decision, we see no ground to entertain this petition.

19. There is no material on record, and nothing is pleaded about the Petitioner's capacity to arrange the pre-deposit amount. At least the impugned order indicates that during the hearing in question, the Petitioner was dealing in the import and export of gold and had a turnover of Rs.485 crores.

20. For all the above reasons, we decline to entertain this petition. However, this will not preclude the Petitioner from instituting an appeal against the impugned order. None of the observations in this order need to influence the Appellate Court should the Petitioner institute an appeal against the impugned order. The observations were in the context of considering the submissions regarding the departure from the rule or practice of exhaustion of alternate remedies.

21. Dr. Chandrachud states that the Petitioner will file an appeal against the impugned order within four weeks of today. If such an appeal is indeed filed within four weeks of today, then the Tribunal should consider that this petition was instituted on 26 April 2024 and

has remained pending in this Court. The Petitioner was pursuing the matter, and therefore, the Tribunal should consider this aspect when dealing with the application seeking condonation of delay.

22. This Petition is disposed of in the above terms without any cost order. Interim orders, if any, are vacated. Interim Applications, if any, stand disposed of. All concerned must act on an authenticated copy of this order.

(Jitendra S. Jain, J.) (M. S. Sonak, J.)