REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4956 OF 2022

The State of Maharashtra and Others …Appellants

Versus

Greatship (India) Limited …Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.04.2021 passed by the High Court of Judicature at Bombay in Writ Petition (Stamp) No. 92630 of 2020, by which the High Court has, in exercise of powers under Article 226 of the Constitution of India, set aside the assessment order passed by the assessing authority

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Reason:

and also the belated notice of demand, the State of Maharashtra and others have preferred the present appeal.

2. That the respondent – original writ petitioner was subjected to proceedings under the Maharashtra Value Added Tax, 2002 (hereinafter referred to as the 'MVAT Act') and Central Sales Tax Act, 1956 (hereinafter referred to as the 'CST Act'). The Assessing Officer issued notice of assessment dated 01.02.2018 calling upon the assessee to produce relevant documents and also to show cause as to why it should not be assessed under the relevant provisions of Section 23 of the MVAT Act.

2.1 According to the writ petitioner, the writ petitioner submitted the required documents and also showed cause *vide* letter dated 03.05.2018. That a personal hearing was fixed on 16.03.2020. However, on 16.03.2020 the Assessing Officer was not available and therefore no hearing took place. According to the writ petitioner, multiple telephone calls were made to the Assessing Officer on 17.03.2020, 18.03.2020 and 19.03.2020 for personal hearing, but no such hearing materialised. According to the writ petitioner, *vide* letter dated 20.03.2020 it was submitted before the Assessing Officer that for the financial year under consideration the relevant documents had already been submitted and personal hearing was requested. The Assessing

Officer passed an order on 20.03.2020 determining the tax liability along with interest and penalty under the MVAT Act and CST Act.

2.2 That without preferring any appeal before the first appellate authority, the respondent – assessee – original writ petitioner filed a writ petition before the High Court challenging the assessment order passed under the provisions of the MVAT Act and CST Act alleging *inter alia* that no order was passed on 20.03.2020 and it was passed in the month of July, 2020, which was beyond the period of limitation. The High Court has entertained the said writ petition against the assessment order under Article 226 of the Constitution of India and has passed the impugned judgment and order quashing and setting aside the assessment order and the demand notice.

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the State of Maharashtra and others have preferred the present appeal.

3. Number of submissions have been made by the counsel appearing for the respective parties on merits and on the assessment order passed by the Assessing Officer. However, for the reasons given hereinbelow, we are of the opinion that against the assessment order, the High Court ought not to have entertained the writ petition and ought to have

relegated the assessee to prefer a first appeal before the first appellate authority. Therefore, we are not elaborating the submissions on merits.

4. Shri Sachin Patil, learned counsel appearing on behalf of the appellants has vehemently submitted that against the assessment order passed by the Assessing Officer under the provisions of the MVAT Act and CST Act, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India.

4.1 It is next submitted by the learned counsel appearing on behalf of the appellants that the assessee had a statutory alternative remedy available by way of appeal before the first appellate authority and the said remedy ought to have been pursued, more so because, there were very serious disputed facts as to whether the assessment order was passed on 20.03.2020 or on 14.07.2020 (as alleged by the assessee).

4.2 Making the above submissions and relying upon the decisions of this Court in the case of ***Titaghur Paper Mills Co. Ltd. v. State of Orissa (1983) 2 SCC 433; Punjab National Bank v. O.C. Krishnan (2001) 6 SCC 569; Raj Kumar Shivhare v. Directorate of Enforcement (2010) 4 SCC 772; and United Bank of India v. Satyawati Tondon and others (2010) 8 SCC 110***, it is prayed to allow the present appeal.

5. Shri Rafique Dada, learned Senior Advocate appearing on behalf of the respondent has submitted that considering the material on record, the High Court has observed that the assessment order was not passed on 20.03.2020 and must have been passed subsequently, i.e., beyond 31.03.2020 and therefore as the assessment order was passed beyond the period of limitation prescribed under the Act, the High Court was justified in entertaining the writ petition and quashing and setting aside the assessment order.

5.1 Shri Rafique Dada, learned Senior Advocate appearing on behalf of the respondent – assessee has relied upon the following decisions of this Court in support of his submission that the High Court has rightly entertained the writ petition against the order of assessment,

1. ***M/s Filterco & Another v. Commissioner of Sales Tax, Madhya Pradesh and Another, (1986) 2 SCC 103;***
2. ***Assistant Commissioner (CT) LTU & Another v. Amara Raja Batteries Limited, (2009) 8 SCC 209; and***
3. ***Whirlpool Corporation v. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1***

5.2 Learned Senior Advocate appearing on behalf of the original writ petitioner has further submitted that in the present case for an earlier assessment order, there was a decision against the assessee by the first appellate authority on merits and therefore it may be a formality to prefer

an appeal before the first appellate authority and hence the original writ petitioner rightly filed the writ petition before the High Court.

6. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that against the assessment order passed by the Assessing Officer under the provisions of the MVAT Act and CST Act, the assessee straightway preferred writ petition under Article 226 of the Constitution of India. It is not in dispute that the statutes provide for the right of appeal against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision before the Tribunal. In that view of the matter, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act. At this stage, the decision of this Court in the case of ***Satyawati Tondon (supra)*** in which this Court had an occasion to consider the entertainability of a writ petition under Article 226 of the Constitution of India by by-passing the statutory remedies, is required to be referred to. After considering the earlier decisions of this Court, in paragraphs 49 to 52, it was observed and held as under:

“49. The views expressed in *Titaghur Paper Mills Co. Ltd.* vs. *State of Orissa* (1983) 2 SCC 433 were echoed in *CCE* v. *Dunlop India Ltd.* (1985) 1 SCC 260 in the following words: (SCC p. 264, para 3)

> “*3*. … Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”

50. In *Punjab National Bank* v. *O.C. Krishnan* (2001) 6 SCC 569 this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed: (SCC p. 570, paras 5-6)

> “*5*. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short ‘the Act’). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.
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> *6*. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

51. In *CCT* v. *Indian Explosives Ltd.* [(2008) 3 SCC 688] the Court reversed an order passed by the Division Bench of the Orissa High Court quashing the show-cause notice issued to the respondent under the Orissa Sales Tax Act by observing that the High Court had completely ignored the parameters laid down by this Court in a large number of cases relating to exhaustion of alternative remedy.

52. In *City and Industrial Development Corpn.* v. *Dosu Aardeshir Bhiwandiwala* [(2009) 1 SCC 168] the Court highlighted the parameters which are required to be kept in view by the High Court while exercising jurisdiction under Article 226 of the Constitution. Paras 29 and 30 of that judgment which contain the views of this Court read as under: (SCC pp. 175-76)

> "*29*. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.
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> *30*. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:
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> (*a*) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
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> (*b*) the petition reveals all material facts;
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> (*c*) the petitioner has any alternative or effective remedy for the resolution of the dispute;
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> (*d*) person invoking the jurisdiction is guilty of unexplained delay and laches;
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> (*e*) ex facie barred by any laws of limitation;
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> (*f*) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

> **53**. In *Raj Kumar Shivhare* v. *Directorate of Enforcement* [(2010) 4 SCC 772] the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed: (SCC p. 781, paras 31-32)
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> > "*31*. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.
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> > *32*. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum."

7. Applying the law laid down by this Court in the aforesaid decision, the High Court has seriously erred in entertaining the writ petition under Article 226 of the Constitution of India against the assessment order, by-passing the statutory remedies.

8. Now so far as the reliance placed upon the decisions of this Court by the learned Senior Advocate appearing on behalf of the respondent, referred to hereinabove, are concerned, the question is not about the maintainability of the writ petition under Article 226 of the Constitution, but the question is about the entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. There are serious disputes on facts as to whether the assessment order was passed on 20.03.2020 or 14.07.2020 (as alleged by the assessee).

No valid reasons have been shown by the assessee to by-pass the statutory remedy of appeal. This Court has consistently taken the view that when there is an alternate remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under constitutional provisions.

9. In view of the above and in the facts and circumstances of the case, the High Court has seriously erred in entertaining the writ petition against the assessment order. The High Court ought to have relegated the writ petitioner – assessee to avail the statutory remedy of appeal and thereafter to avail other remedies provided under the statute.

10. Under the circumstances, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The writ petition filed before the High Court challenging the assessment order and consequential notice of demand of tax is hereby dismissed. The respondent – assessee is relegated to avail the statutory remedy of appeal and other remedies available under the MVAT Act and CST Act. It is directed that if such a remedy is availed within a period of four weeks from today, the appellate authority shall decide and dispose of the same on its own merits in accordance with law without raising any question of limitation, however, subject to fulfilling the other conditions, if any, under the statute. It is made clear that we have not expressed any

opinion on the merits of the case in favour of either of the parties and it is for the appellate authority and/or appropriate authority to consider the appeal/proceedings on its/their own merits and without being influenced in any way by any of the observations made by the High Court which otherwise have been set aside by the present order. The present appeal is allowed in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

……..J.
[M.R. SHAH]

NEW DELHI;
SEPTEMBER 20, 2022.

……..J.
[B.V. NAGARATHNA]