REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7170 OF 2022

The State of Madhya Pradesh and Another …Appellants

Versus

M/s Commercial Engineers and Body Building Company 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 05.08.2015 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Petition No. 7628/2015, by which the Division Bench of the High Court has entertained the writ petition under Article 226 of the Constitution of India and has quashed and set aside the Assessment Order passed by the Divisional Deputy Commissioner, Commercial Tax, Jabalpur, the State of Madhya Pradesh has preferred the present appeal.

2. By an Assessment Order dated 28.02.2015, the Assessing Officer denied the Input rebate under Section 14 of the Madhya Pradesh Value Added Tax Act, 2002 (hereinafter referred to as the 'MP VAT Act, 2002') to the respondent. Without preferring an appeal against the Assessment Order denying the Input rebate under Section 46(1) of the MP VAT Act, 2002, the respondent preferred the writ petition before the High Court. Despite the specific objection raised on behalf of the State not to entertain the writ petition against the Assessment Order denying the Input rebate in view of the availability of the statutory remedy of appeal under Section 46(1) of the MP VAT Act, 2002, the High Court entertained the writ petition by observing that there are no disputed questions of facts involved in the matter and it is a question to be decided on admitted facts for which no dispute or enquiry into factual aspects of the matter is called for. That thereafter by the impugned judgment and order, the High Court has set aside the Assessment Order denying the Input rebate and consequently has allowed the Input rebate in favour of the respondent – assessee – original writ petitioner. The impugned judgment and order passed by the High Court is the subject matter of present appeal.

3. Number of submissions have been made by the learned counsel appearing on behalf of the respective parties on merits including the entertainability of the writ petition by the High Court under Article 226 of

the Constitution of India challenging the Assessment Order denying the Input rebate. However, for the reasons stated hereinbelow, we propose to dismiss the writ petition preferred before the High Court and relegate the respondent – assessee – original writ petition to prefer a statutory appeal against the Assessment Order, we are not considering any other submission on merits on whether the High Court is justified in allowing the Input rebate or not.

4. Having heard learned counsel for the respective parties at length on the entertainability of the writ petition under Article 226 of the Constitution of India by the High Court against the Assessment Order and the reasoning given by the High Court while entertaining the writ petition against the Assessment Order despite the statutory remedy by way of an appeal available, we are of the opinion that the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate against which a statutory appeal would be available under Section 46(1) of the MP VAT Act, 2002.

5. While entertaining the writ petition under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate, the High Court has observed that there are no disputed question of facts arise and it is a question to be decided on admitted facts for which no dispute or enquiry into factual aspects of the matter is

called for. The aforesaid can hardly be a good/valid ground to entertain the writ petition under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate against which a statutory remedy of appeal was available.

6. At this stage, a recent decision of this Court in the case of ***The State of Maharashtra and Others v. Greatship (India) Limited (Civil Appeal No. 4956 of 2022, decided on 20.09.2022)*** is required to be referred to. After taking into consideration the earlier decision of this Court in the case of ***United Bank of India v. Satyawati Tondon and others, reported in (2010) 8 SCC 110***, it is observed and held that in a tax matter when a statutory remedy of appeal is available, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India against the Assessment Order by-passing the statutory remedy of appeal. While holding so, this Court considered the observations made by this Court in paragraphs 49 to 53 in ***Satyawati Tondon (supra)***, which read 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)
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> "*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.

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)

> "*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. In view of the above, the impugned judgment and order passed by the High Court entertaining the writ petition under Article 226 of the Constitution of India against the Assessment Order denying the benefit of Input rebate is unsustainable and the same deserves to be quashed and set aside and the original writ petitioner is to be relegated to prefer an appeal against the Assessment Order dated 28.02.2015 passed by the Divisional Deputy Commissioner, Commercial Tax, Jabalpur, which may be available under Section 46(1) of the MP VAT Act, 2002.

8. In view of the above and for the reasons stated above and without expressing anything on merits in favour of either of the parties on the Input rebate claimed by the respondent – original writ petitioner, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The writ petition preferred by the respondent herein – original writ petitioner – assessee is hereby dismissed on the ground of alternative efficacious statutory remedy of appeal available to the respondent. The respondent is relegated to prefer an appeal before

the appellate authority under Section 46(1) of the MP VAT Act, 2002. If such an appeal is preferred within a period of four weeks from today, the same be entertained and decided and disposed of on merits without raising an issue with respect to limitation, however, subject to compliance of the statutory requirements, if any, for preferring an appeal under Section 46(1) of the MP VAT Act, 2002. The appellate authority to decide and dispose of the appeal and the issue without in any way being influenced by any of the observations made by the High Court which as such is hereby quashed and set aside by the present judgment and order.

9. The present appeal is allowed to the aforesaid extent. However, there shall be no order as to costs.

……..J.
[M.R. SHAH]

NEW DELHI;
OCTOBER 14, 2022.

……..J.
[KRISHNA MURARI]