

Vinod Kumar Harjai v. Union Of India Thru. Secy. Ministry Of Finance, New Delhi And 2 Others

WRIT TAX No. 219 of 2023 | Decision: 2023-11-09 | Allahabad High Court (Lucknow Bench)

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Neutral Citation No. - 2023:AHC-LKO:74458

Court No. - 17 Case :- WRIT TAX No. - 219 of 2023 Petitioner :- Vinod Kumar Harjai Respondent :- Union Of India Thru. Secy. Ministry Of Finance, New Delhi And 2 Others Counsel for Petitioner :- Himanshu Trigunait Counsel for Respondent :- A.S.G.I.,Dipak Seth

Hon'ble Alok Mathur,J.

1. Heard Sri Himanshu Trigunait, learned counsel for petitioner as well as Sri Manish Mishra, who has filed memo of appearance on behalf of respondent Nos. 2 & 3 and Sri Krishna Lal Yadav, Advocate who has filed his Vakalatnama on behalf of respondent No. 1.

2. By means of present writ petition, the petitioner has challenged the order dated 30.06.2023 passed by Principal Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow.

3. At the very outset, learned counsel for respondent submits that petitioner has an efficacious remedy of appeal before the CESTAT as per Section 35-B of Central Excise Act, 1944.

4. He further submits that in light of the fact that efficacious alternative remedy is available to the petitioner and writ petition would not be maintainable and in this regard he relied upon the judgment of the Supreme Court passed in the case of Hon'ble Apex Court in the case of Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, 2014 (Vol. 1) SCC 603, has clearly laid down that in the taxing statute where entire mechanism has been provided, the assessee should be relegated to the authority prescribed under the Act and the Court in exercise of jurisdiction under Article 226 of the Constitution of India should not entertain such a matter. The Apex Court held as under :

"15. Before discussing the fact proposition, we would notice the principal of law as laid down by the 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 to 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.

16. The Constitution Benches of this 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. R.T. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers 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 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 principles of natural justice or procedure required for decision has not been adopted."

5. In light of the above, this Court is of the considered view that petitioner has an efficacious remedy of appeal under Section 35-B of Central Excise Act, 1944 before the Commissioner.

6. Accordingly, the writ petition is dismissed on the ground of alternative efficacious remedy available to the petitioner.

(Alok Mathur, J.) Order Date :- 9.11.2023 Ravi/

2023-11-09T17:39:45+0530 High Court of Judicature at Allahabad, Lucknow Bench