Saifuddin Ahmad v. The Customs, Excise And Service Tax Appellate Tribunal, Allahabad Thru. Chairman And Others

WRIT TAX No. 20 of 2024 | Decision: 2024-02-05 | Allahabad High Court (Lucknow Bench)

Neutral Citation No. - 2024:AHC-LKO:10469

Court No. - 6

Case :- WRIT TAX No. - 20 of 2024

Petitioner :- Saifuddin Ahmad Respondent :- The Customs, Excise And Service Tax Appellate Tribunal, Allahabad Thru. Chairman And Others Counsel for Petitioner :- Ankit Pande Counsel for Respondent :- Dipak Seth

Hon'ble Alok Mathur,J.

1. Heard Shri Ankit Pande, learned counsel appearing on behalf of the petitioner, as well as Shri Manish Mishra, Advocate holding brief of Shri Dipak Seth, learned counsel appearing on behalf of the respondents and perused the material available on record.

2. By means of the present writ petition, the petitioner has assailed the order dated 22.11.2021 passed by the Additional Commissioner, CGST and Central Excise, Lucknow thereby confirming the demand of Rs.65,86,883/- on the petitioner and further imposing penalty under Section 77 (c) (i) of the Finance Act, 1994 read with Section 142 and 174 of the CGST Act, 2017.

3. A preliminary objection has been raised by learned counsel for respondents stating that against the order dated 22.11.2021, the petitioner has filed an appeal before the Custom Excise & Service Tax Appellate Tribunal, which is pending consideration. It is stated that for the same cause of action, the petitioner cannot file petition before two forums and he has chosen to file an appeal before the Custom Excise & Service Tax Appellate Tribunal, the present petition would not be maintainable.

4. Learned counsel for petitioner could not dispute that the impugned order has already been assailed by him before the Custom Excise & Service Tax Appellate Tribunal and only because he was unable to pre- deposit 2.5% of the amount due, he has approached this Court.

5. In view of the aforesaid, this Court is of the considered view that once the petitioner has approached the statutory tribunal and the appeal is pending consideration then against the same order, this petition would not be maintainable. It is noticed that the jurisdiction under Article 226/227 of the Constitution of India is an extra-ordinary and discretionary jurisdiction and once the petitioner has already availed of his statutory remedy then such a case the extra-ordinary jurisdiction cannot be exercised while entertaining the petition against the order against which the appeal is already pending.

6. In light of the above, this Court is of the considered view that the present writ petition would not be maintainable against the order dated 22.11.2021, accordingly for the reason aforesaid, the petition stands dismissed.

.

(Alok Mathur, J.)

Order Date :- 5.2.2024 Virendra

2024-02-05T16:14:47+0530 High Court of Judicature at Allahabad, Lucknow Bench