



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No.17550/2022

Tanushree Logistics Private Limited, N.H. 8, Near Aaram Hotel,
Village Gidani, P.O. Dudu, Jaipur (Rajasthan) Through Shree
Pawan Kumar Jajoo, Vice- President (Commercial).

-----Petitioner

Versus

1. State Of Rajasthan Through Principal Secretary, Ministry Of Finance, Government Secretariat, Janpath, Jaipur-302005.
2. Commissioner Of Commercial Taxes Department Through Commissioner, Kar Bhawan, Jaipur-302005 (Rajasthan).
3. Joint Commissioner, Circle-B, Enforcement Wing, Rajasthan-II, Jaipur, Room No. 101, Behind Kar Bhawan Building, Ambedkar Circle, Jaipur-302001.
4. Assistant Commissioner/ State Tax Officer, Commercial Taxes Department, Circle-3, Anti- Evasion-I, Jaipur.

-----Respondents

Connected With

D.B. Civil Writ Petition No.17120/2022

Tanushree Logistics Private Limited, N.H. 8, Near Aaram Hotel,
Village Gidani, P.O. Dudu, Jaipur (Rajasthan) Through Shree
Pawan Kumar Jajoo, Vice - President (Commercial)

-----Petitioner

Versus

1. State Of Rajasthan Through Principal Secretary, Ministry Of Finance, Government Secretariat, Janpath, Jaipur-302005
2. Commissioner Of Commercial Taxes Department Through Commissioner, Kar Bhawan, Jaipur-302005 (Rajasthan)
3. Joint Commissioner, Circle-B, Enforcement Wing, Rajasthan-II, Jaipur, Room No. 101, Behind Kar Bhawan Building, Ambedkar Circle, Jaipur-302001
4. Assistant Commissioner/ State Tax Officer, Commercial Taxes Department, Circle-3, Anti-Evasion-I, Jaipur.

-----Respondents



D.B. Civil Writ Petition No.17412/2022

Tanushree Logistics Private Limited, N.H. 8, Near Aaram Hotel,
Village Gidani, P.O. Dudu, Jaipur (Rajasthan) Through Shree
Pawan Kumar Jajoo, Vice - President (Commercial)

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Versus

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4. Assistant Commissioner/ State Tax Officer, Commercial Taxes Department, Circle-3, Anti-Evasion-I, Jaipur.

-----Respondents

For Petitioner(s) : Mr. M.P. Devnath, Advocate with
Mr. Daksh Pareek, Advocate
Mr. Arjun Singh, Advocate
Mr. Abhishek Anand, Advocate

For Respondent(s) : Mr. Punit Singhvi, Advocate with
Mr. Ayush Singh, Advocate
Mr. Akshay Singh, Advocate
Mr. Swapnil S. Sharma, Advocate

HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI

Order

REPORTABLE

07/12/2022

Heard.

At the outset, learned counsel for the respondents raised an objection with regard to maintainability of these writ petitions, seeking to challenge an order of assessment under Section 50 & 74 of the Rajasthan Goods and Service Tax Act, 2017 (hereinafter



referred to as "the Act") on the ground that these writ petitions have been filed against the order of assessment though the petitioner has an efficacious and alternative statutory remedy of appeal under Section 107 of the Act.

Learned counsel for the petitioner argued that though there exist an alternative remedy of statutory appeal, these petitions have been filed by the petitioner against the order of assessment in the matter of levy of goods and services tax for assessment years 2017-18, 2018-19 & 2019-2020 along with interest and penalty as the impugned order suffers from violation of principles of natural justice, in flagrant violation of statutory provisions with regard to issuance of show cause notice. He would submit that though the show cause notices were issued to the petitioner, the petitioner sought adequate opportunity to file reply to show cause notices, no specific date of hearing was intimated to the petitioner and finally impugned order in these three writ petitions was passed on 11.11.2022 in respect of three different assessment years. He would next contend that in any case the petitioner had submitted his reply on 11.11.2022 itself, but the impugned orders assailed in these petitions do not show that reply was ever considered and on the other hand it has been incorrectly stated that petitioner did not participate in the inquiry despite opportunity afforded, nor produced any record and ever filed any reply. Further submission of learned counsel for the petitioner is that now in all the cases the respondents have acted in flagrant violation of provisions contained under Section 74 of the Act inasmuch as the mandatory requirement of giving summary of grounds in form DRC-01 was not supplied along with show cause notice and, therefore, there is apparent flagrant violation of Rule



142 of Rajasthan Goods and Service Tax Rules, 2017. He would further submit that various documents collected by the respondents, which includes survey report and statements seven in number, which formed the basis for impugned order of assessment were never submitted to the petitioner. He would further submit that as provided under Section 75(5) of the Act, he was entitled to three opportunities but those opportunities were never granted to him and all of a sudden, without any reply on record, the impugned order was passed.

He would further submit that in the show cause notice it was not clearly stated as to which clause of Section 15 of the Act was applicable to create statutory liability for payment of tax, therefore, the show cause notice and the impugned order both are vague, perverse and unsustainable in law. He has also raised an issue that authority had prejudged the issue while issuing show cause notice and the impugned order is nothing but the repetition of the contents of show cause notice.

On the other hand, learned counsel for respondents referring to his reply submitted that in the present case, the respondents not only acted strictly in accordance with the provisions of law but more than one opportunity was afforded to the petitioner at various stages of the proceedings commencing from issuance of summons under Section 70 of the Act followed by issuance of show cause notice under Section 74 of the Act on 06.07.2022. Learned counsel for the respondents further submitted that it is not a case where a bare formality of issuing show cause notice was there and without affording any opportunity of hearing order was passed. Right from the beginning when summons under Section 70 of the Act were issued to the petitioner way-back on



06.09.2019, relevant details of Diesel provided by Cement Companies, GR details and agreements were required to be submitted and thereafter, the petitioner sought several adjournments followed by letter requesting withdrawal of summons. The petitioner avoided to submit any information. On 26.11.2019, summons for information were issued and the petitioner provided only partial information, another summon was issued to him on 30.01.2020 followed by summons on 10.06.2020 and 14.07.2020 seeking clarification/documents relating to dispatch of diesel. The petitioner sought adjournments due to COVID-19. On 11.08.2020, summons seeking clarification/documents with regard to quantity of dispatch of diesel were again sought to which the petitioner again started seeking adjournment. Another summon was issued to him on 15.09.2020 whereafter adjournment was sought. On 02.11.2020, another summon was issued and again adjournment was sought. Summons were again issued on 14.12.2020 requiring appropriate necessary details sought earlier to which only partial information was submitted. It was followed by summon on 11.01.2021 stating non-compliance of summons and even penalty was imposed against which also an appeal was filed. Another summon under Section 70 of the Act was issued on 24.09.2021, which was responded to by requesting to drop the summons but no information was provided. DRC-01A intimation of proposed liability under Section 74(5) of the Act was again issued to the petitioner, which was replied to and finally show cause notice under Section 74 of the Act was issued on 06.07.2022. The petitioner only kept on seeking adjournments. On 14.07.2022, he requested adjournment which was granted. Again request for adjournment



was made on 01.08.2022, which was again accepted and no adverse order was passed. On 21.09.2022, another adjournment was sought and again the authorities did not pass any order and awaited submission of reply. When ultimately no reply was filed, order was passed on 11.11.2022.

Learned State counsel would submit that violation of non-issuance of summary of grounds in form DRC-01 are only technical in nature because the purpose of giving summary of grounds in form of DRC-01 is to provide an opportunity stating as to on what basis proposed demands have been made. Referring to contents of show cause notice issued on 06.07.2022, learned State counsel would emphasise that detailed notice was given to the petitioner, which contained summary of grounds on which the action was proposed and, therefore, there was substantial compliance of the provisions of requirement of giving summary of grounds and merely because it was not in the form, action could not be held to be illegal. Learned State counsel would also submit that alleged submission of reply on 11.11.2022 is on the date when the order itself was passed and therefore, having not availed opportunity to file reply, no grievance can be raised. The petitioner did not appear before the authority, did not seek disclosure of any documents or record and only avoided to file reply. The allegations of violation of provisions contained in Section 75(5) of the Act are not made out because as many as three adjournments were granted to the petitioner to submit reply to show cause notices but the petitioner did not submit any reply.

Having heard learned counsel for the parties on the issue of maintainability of the petitions on the ground of existence of alternative remedy and after having gone through the material on



record, we are of the view that no case of violation of principles of natural justice is made out by the petitioner. It is not that overnight the orders were passed against the petitioner. A detailed inquiry was made against the petitioner. Summons under Section 70 of the Act were issued on several occasions and opportunity was granted to provide information. According to respondents it raises an issue of disputed questions of fact, as the petitioner only submitted partial information and not the complete information and suppressed details of dispatch of diesel.

Furthermore, we have gone through the contents of show cause notices in order to satisfy ourselves whether it contains the summary of grounds as required to be disclosed in form DRC-01 referable to Rule 142 of Rajasthan Goods and Service Rules 2017. We find that the show cause notice is in detail and gives the grounds including the provisions of law under which the tax is proposed to be imposed on the petitioner. The respondents have stated in the reply that during period under consideration, due to technical problems, DRC-01 form could not be attached but full care and caution was taken that summary of grounds are clearly stated in the show cause notice so that the petitioner—assessee has full notice and knowledge of the material particulars and the grounds on which the action is proposed to be taken against him. Therefore, argument in this regard as raised by the petitioner is *sans substratum*.

It lies in the mouth of the petitioner to allege violation of principles of natural justice inasmuch as after issuing of show cause notice on 06.07.2022 as record itself speaks, the petitioner requested for adjournments on 14.07.2022, 01.08.2022 and then 21.09.2022. The petitioner did not avail the opportunity granted to



him more than once. The petitioner did not ask for disclosure of any particular record, report or statement but avoided to file any reply.

The argument based on right to get three adjournments as a matter of course, is based on provisions contained under Section 75(5) of the Act. The said provision provides that proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing provided that no such adjournment shall be granted for more than three times to a person during the proceedings. We fail to understand how an argument based on right to seek adjournment could be raised on the face of provisions contained under Section 75(5) of the Act. In any case, on the peculiar facts and circumstances of the present case, we find that the petitioner was, in fact, granted three adjournments and when he failed to submit any reply, the order was passed against him. The petitioner claims to have filed reply on that very day, which does not come to his aid. Therefore, an argument that his reply was not considered while passing impugned order, does not arise for consideration.

The petitioner has relied upon several judgments not only seeking to raise issue on the merits of the case but also on the allegation of violation of law and violation of principles of natural justice. None of those judgments come to the aid of the petitioner as in view of the peculiar facts and circumstances of the present case where the petitioner was afforded as many as three opportunities of hearing, he failed to file any reply. Allegations of flagrant violation has already been dealt with hereinabove after



going through the contents of show cause notice that it contains summary of grounds.

The argument that show cause notice prejudged the issue and nothing was left to be answered, is rejected at the threshold because present is not a case where the petitioner had approached the court against the show cause notice. Otherwise also, after going through the show cause notice dated 14.07.2022 we find that the competent authority based on information collected earlier pursuant to various summons and notices issued to the petitioner only recorded its tentative opinion to seek petitioner's reply on the material collected.

Present is a case arising out of proceedings for determination and levy of tax and is essentially a fiscal matter, not being a case dealing with personal life and liberty.

Recent judicial pronouncements of the Hon'ble Supreme Court settle the legal position with regard to maintainability of the writ petitions under Article 226 of the Constitution of India by the High Court against the assessment order, limiting the scope of interference by the writ court in cases where remedy of statutory appeal is available. In the case of **Assistant Commissioner of State Tax and Others Versus Commercial Steel Limited, 2021 SCC ONLINE SC 884**, their Lordships in the Supreme Court, taking into consideration availability of statutory remedy of appeal as provided under Section 107 of the Act held thus:

"11. The respondent had a statutory remedy Under Section 107. Instead of availing of the remedy, the Respondent instituted a petition Under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition Under Article 226 of the Constitution. But a writ



petition can be entertained in exceptional circumstances where there is:

- (i) a breach of fundamental rights;
- (ii) a violation of the principles of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation.

12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the Respondent to the pursuit of the alternate statutory remedy Under Section 107, this Court makes no observation on the merits of the case of the respondent."

Thus in the absence of breach of fundamental rights; violation of principles of natural justice; excess of jurisdiction; or a challenge to the vires of the statute or delegated legislation, the writ petition would not be maintainable.

In another celebrated decision of the Supreme Court in the case of **State of Maharashtra and Others Versus Greatship (India) Limited, 2022 SCC ONLINE SC 1262**, in the matter of challenge to an order of assessment and levy of tax, their Lordships in the Supreme Court, after surveying earlier decisions, held as below:-

"14. 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. v. 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.

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 Corporation v. Dosu Aardeshir Bhiwandiwalla* [(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.

30. The Court while exercising its jurisdiction Under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for

the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(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.

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."

15. 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, bypassing the statutory remedies.

16. 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.

17. 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."





In another decision, in the case of **State of Madhya Pradesh and Another Versus Commercial Engineers and Body Building Company Limited, 2022 SCC ONLINE SC 1425**, relying upon its decision in **State of Maharashtra and Others Versus Greatship (India) (supra)**, the legal position was reiterated by the Supreme Court, it was held thus:

"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 Ors. 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*, 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.”

The law declared in the aforesaid decisions, particularly in cases where challenge arises out of an order of assessment in the matter of imposition of tax, leaves no manner of doubt that except in limited circumstances as dealt with hereinabove, the writ petitions would not be maintainable.

In view of above, we are not inclined to entertain these writ petitions and to go into correctness of the order of assessment and leave this to be dealt with by the appellate authority in the event the writ petitioner choses to avail his right of appeal as provided under Section 107 of the Act.

In the result, the objection of maintainability of the writ petitions is sustained and the writ petitions are held to be not maintainable, as the petitioner has an efficacious alternative statutory remedy of filing of an appeal.

All these writ petitions are accordingly dismissed, leaving it open for the petitioner to avail alternative remedy of appeal. We further direct that the period during which these petitions remained pending before this court shall not be counted for the purposes of counting the period of limitation in filing appeal.

A copy of this order be placed on record of each connected writ petition.

(VINOD KUMAR BHARWANI),J (MANINDRA MOHAN SHRIVASTAVA),J

Karan/15-17