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Mere existence of an alternative remedy of appeal or revision would not depose the High Court's writ jurisdiction – Supreme Court

16 February 2023

Summary

The Supreme Court (SC) has reversed the High Court's order and held that the mere fact that the petitioner has not pursued the alternative remedy available could not mechanically be construed as a ground for dismissal of the petition. The SC further opined that the mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not depose the jurisdiction of the High Court and render a writ petition 'not maintainable.' The dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without examining whether an exceptional case has been made out for such entertainment would not be proper.

In the present case, the appellant had questioned the competence of the Revisional Authority to exercise the suo motu power, which was a case involving a pure question of law. Therefore, the writ petition deserved to be considered on merits and was not liable to be dismissed by the High Court.

Facts of the case

- M/s Godrej Sara Lee Ltd. (the appellant) is engaged in the business of manufacturing, marketing and sales of household insecticide products in various forms, viz. mosquito coils, mats, refills, aerosols, baits and chalks under the popular brand name 'Good Knight' and 'Hit' from its sales office at Kurukshetra.
- The appellant had questioned the jurisdiction of the Deputy Excise and Taxation Commissioner (ST)-cum-Revisional Authority (the Revisional Authority) to reopen proceedings, in exercise of the suo motu revisional power conferred by Section 34 of the Haryana Value Added Tax Act, 2003 (HVAT Act). The revisional authority had held that the assessing authority had erred in levying tax on mosquito repellant @ 4% instead of 10%.
- The Punjab and Haryana High Court (HC) had dismissed the writ petition filed by the appellant and relegated the appellant to the remedy of an appeal under Section 33 of the HVAT Act.
- Aggrieved, the appellant filed an appeal before the SC, challenging the order passed by the HC that had dismissed the writ petition filed by the appellant.

Issues before the SC:

- Whether the High Court was justified in declining interference on the ground of availability of an alternative remedy of appeal to the appellant under Section 33 of the HVAT Act, which it had not pursued?
- Whether to remit the writ petition to the HC for hearing it on merits or to examine the correctness or otherwise of the orders impugned before the HC?

SC's observations and ruling CIVIL APPEAL NO. 5393 of 2010 dated 1 February 2023):

- The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself.
- Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs.
- The fact that the appellant had not pursued the alternative remedy available, cannot mechanically be construed as a ground for dismissal of the petition by the HC.
- The mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the HC under Article 226 has not pursued, would not oust the jurisdiction of the HC and render a writ petition 'not maintainable'.
- The availability of an alternative remedy does not operate as an absolute bar to the 'maintainability' of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than the rule of law.

- ‘Entertainability’ and ‘maintainability’ of a writ petition are distinct concepts. The objection as to ‘maintainability’ goes to the root of the matter, and if such objection was found to be of substance, the courts would be rendered incapable of even receiving the suits for adjudication. On the other hand, the question of ‘entertainability’ is entirely within the realm of discretion of the High Courts, the writ remedy being discretionary.
- Dismissal of a writ petition by a HC on the ground that the petitioner has not availed the alternative remedy without examining whether an exceptional case has been made out for such entertainment would not be proper.
- In the present case, since a jurisdictional issue was raised by the appellant in the writ petition questioning the very competence of the Revisional Authority to exercise the suo motu power, this was a case involving a pure question of law. Therefore, the plea raised in the writ petition deserved to be considered on merits, and the appellant’s writ petition was not liable to be thrown out at the threshold.
- Therefore, the SC held that the HC committed a manifest error of law by dismissing the writ petition, and the order under challenge is unsustainable, and accordingly, set aside.
- Furthermore, as there has been a lapse of almost 14 years since the orders impugned in the writ petition were made, the SC stated that it would not be in the best interest of justice to remit the matter to the HC.
- In absence of any record to show illegality or (procedural/moral) impropriety, branding the orders of the assessing authority as suffering from illegality and impropriety appears to be unjustified. It also demonstrates thorough lack of understanding of the principle regulating exercise of the suo motu revisional power by a quasi-judicial authority apart from being in breach of the principle of judicial discipline, while confronted with orders passed by a superior tribunal/court.

Our comments

There is no hard and fast rule regarding when the High Court can exercise writ jurisdiction under Article 226. It is a self-imposed restriction and unwritten rule that, in general, High Courts refrain from entertaining writs where an alternate remedy is available.

However, in many cases, the courts have entertained writs where an alternate remedy was not that effective or would have jeopardised the end of justice.

The SC, on many occasions, has held that the availability of an alternative remedy does not operate as an absolute bar to the ‘maintainability’ of a writ petition, and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience, and discretion rather than the rule of law.

Further, in Whirlpool Corporation, the SC had held that the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction, or the vires of an Act is challenged.

The present ruling is in line with the above ruling. It reiterates that when an authority passes the impugned order without having jurisdiction, the writ petition can be entertained despite the availability of an efficacious alternative remedy.

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