



February 2023

Availability of an alternative efficacious remedy will not bar invocation of writ jurisdiction under Article 226.

On February 1, 2023, a 2 (two)judge bench of the Hon'ble Supreme Court of India ("**Supreme Court**") comprising of Mr. Justice Ravindra Bhat and Mr. Justice Dipankar Datta in the case of *M/S. Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors*¹ held that a mere availability of an alternative remedy of appeal / revision would not oust the jurisdiction of the High Court under Article 226 of the Constitution of India ("**Article 226**") rendering a writ petition "not maintainable".

Brief Facts

1. Godrej Sara Lee Ltd. ("**Godrej**") had filed tax returns for the assessment years 2003-04 and 2004-05 under the provisions of the Haryana Value Added Tax Act, 2003 ("**VAT Act**"). The Assessing Authority ("**Authority**") issued show cause notice as to why greater tax liability should not be imposed on Godrej in view of re-classification of the goods under the VAT Act.
2. After considering the justifications made by Godrej, the Authority accepted the lower rate of tax returns. Thereafter, the Revisional Authority ("**Revisional Authority**") called for the assessment records of Godrej and arrived at a conclusion that Godrej should pay the higher rate of tax.
3. Godrej approached the High Court of Punjab and Haryana ("**P&H HC**") by preferring a writ petition, questioning the jurisdiction of the Revisional Authority to reopen proceedings.
4. The P&H HC dismissed the writ petition on the ground of maintainability, relegating Godrej to the remedy of an appeal under Section 33 of the VAT Act.
5. Aggrieved by the decision of the P&H HC, Godrej approached the Supreme Court by way of a special leave petition.

Issues

One of the issues which the Supreme Court was called upon to decide was whether the P&H HC was justified in declining interference on the ground of availability of an alternative remedy of appeal to Godrej under Section 33 of the VAT Act?

Analysis and Findings of the Supreme Court

¹ Civil Appeal No. 5393 of 2010

1. The Supreme Court observed that the power to issue prerogative writs under Article 226 is plenary in nature. Article 226 does not cast any fetters on High Courts whilst exercising their power to issue writs. The mere fact that a petitioner before a High Court, in a given case, has not pursued an alternative efficacious remedy available to them, it cannot mechanically be construed as a ground for dismissal.
2. The Supreme Court observed that a writ petition's "entertainability" and "maintainability" are 2 (two) distinctive principles. The objection to "maintainability" goes to the heart of the matter, and if it were upheld, the High Courts would be unable to adjudicate. The determination of "entertainability" is solely within the discretion of the High Courts.
3. The Supreme Court cited its decision in *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*² wherein certain exceptions had been made which would enable a High Court to entertain a writ petition despite the party approaching it had not availed the alternative efficacious remedy provided under law. These exceptions are as follows:
 - a) where the writ petition seeks enforcement of any of the fundamental rights;
 - b) where there is violation of principles of natural justice;
 - c) where the order or the proceedings are wholly without jurisdiction; or
 - d) where the validity of an act is challenged.
4. Reliance was placed on the decision in *State of Uttar Pradesh vs. Mohd. Nooh*³ to hold that 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 a rule of law.
5. The P&H HC by dismissing the writ petition in the present case had committed a manifest error of law for which the order under challenge became unsustainable.

JSA Comment

The decision of the Supreme Court will serve as a shield for bona fide petitioners from routine maintainability objections being raised. This decision is in contrast to the long line of judgments which have held that when there is an alternative efficacious remedy available, judicial prudence would demand that high courts refrain from exercising their jurisdiction under constitutional provisions.

However, this does not necessarily mean that in any given case where there is an alternate efficacious remedy, writ petitions would nevertheless be entertained. The high courts would have to be circumspect whilst exercising their plenary powers taking into account the facts and circumstances of each case. The High Courts would be required to judicially exercise writ jurisdiction or else alternate efficacious remedy provided by the legislature would be rendered nugatory.

² (1998) 8 SCC 1

³ 1958 SCR 595

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