**(2014) 04 MP CK 0093**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition No. 19034 of 2011

Balaji Edibles Pvt. Ltd. — APPELLANT

Vs

Commr. of Cus., C. Ex. & S.T., Bhopal — RESPONDENT

**Date of Decision :** 07-04-2014

**Acts Referred:**

**Citation :** (2015) 316 ELT 83

**Hon'ble Judges :** Subhash Kakade, J;Rajendra Menon, J

**Bench :** Division Bench

## Judgement

1. Counsel for the parties present. Respondents have raised a preliminary objection with regard to maintainability of this writ petition mainly on the ground that against the order passed by the Commissioner, Customs, Central Excise & Service Tax, a remedy of appeal to the Central Customs, Excise & Service Tax Appellate Tribunal, New Delhi is available to the petitioner, therefore, a petition directly before this Court is not maintainable. Even though, learned counsel for petitioner tried to emphasize that as applicability of certain circulars are questioned in the matter, the writ Court can look into the same.

2. However, we are of the considered view that when a statutory remedy is available under a Statute itself and when a specialized Tribunal has been created for adjudication of the matters, particularly taxation matters, then recourse to the statutory remedy available should be taken at the first instance before invoking the writ jurisdiction of this Court.

3. Recently the Supreme Court in the case of Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, has also approved the proposition that when a statutory system of appeals and revisions are provided, then the aggrieved person should take recourse to the said statutory provision and a writ Court should not interfere in the matter.

4. Keeping in view the aforesaid legal principles laid down by the Apex Court and considering the fact that statutory appeal to the Appellate Tribunal is available to

the petitioner, we see no reason to interfere in the matter. Petitioner is granted liberty to challenge the action before the Appellate Tribunal. If an appeal is filed by the petitioner before the concerned Tribunal within a period of 30 days from today, the learned Tribunal is requested to proceed in the matter in accordance with law and not to dismiss the matter on the ground of delay. The petition stands disposed of finally.

 