

(2020) 08 GUJ CK 0248

In the Gujarat High Court

Case No : R/Special Civil Application No. 8116 Of 2020

IHI Corporation

APPELLANT

Vs

State Of Gujarat & 3 Other(s)

RESPONDENT

Date of Decision : 17-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 227
Gujarat Value Added Tax Rules, 2006 — Rule 18(AA), 42(2A)
Gujarat Value Added Tax Act, 2003 — Section 5A, 16, 23(1), 23(3), 24, 34(12), 73,
73(2), 74, 75, 78, 79, 84
Code Of Civil Procedure, 1908 — Section 100

Citation : (2020) 08 GUJ CK 0248

Hon'ble Judges : Vikram Nath, CJ; J.B.Pardiwala, J

Bench : Division Bench

**Advocate : Prakash Shah, Dhaval Shah, Manisha Luvkumar Shah, Government
Pleader, Dharmesh Devnani**

Final Decision : Dismissed

Judgement

J.B.Pardiwala, J

1. By this writ application under Article 226 of the Constitution of India, the writ applicant, a Company incorporated under the Laws of Japan and having its Project Office located in India, has prayed for the following reliefs;

"(a) this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari under Article 226 and 227 of the Constitution of India, calling for the records pertaining to the Petitioner's case and after going into the legality and validity thereof forthwith quash and set aside the Assessment Order dated 23.03.2020 passed by the Respondent No.4;

(b) this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 and 227 of the Constitution of India, ordering and directing the Respondents, their subordinates servants and agents to forthwith (i) withdraw

and/or cancel Order dated 23.03.2020 passed by the Respondent No.4 and

(ii) refrain from taking any further proceedings or steps in furtherance of and/or in implementation of the Order dated 23.03.2020 passed by the Respondent No.4 for recovery of the amounts so confirmed pending the hearing and final disposal of this Petition,

(c) That pending hearing and final disposal of the above Petition, by an interim order and injunction of this Hon'ble Court, this Hon'ble Court be pleased to (i) stay the operation and effect of the impugned Orders dated 23.03.2020 and (ii) restrain the Respondents, their subordinate servants and agents from taking any further proceedings or steps in furtherance of and/or in implementation of the Orders dated 23.03.2020 for recovery of the amount;

(d) for ad-interim reliefs in terms of prayer (c) above;

(e) for costs of the Petition,

(f) Such other and further order or orders as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted."

2. The facts, giving rise to this litigation, may be summarized as under;

2.1 The writ applicant is engaged in providing the consulting engineer and construction services in respect of commercial or industrial building and civil structure. In the course of providing such services, the writ applicant is, inter alia, engaged in the buying and selling of goods for its products in the State of Gujarat.

2.2 The writ applicant is registered as a dealer under the GVAT Act and the Central Sales Tax Act.

2.3 The writ applicant came to be awarded two contracts by the following two project owners in the State of Gujarat, India for engineering, procurement, construction and commissioning assistance for the Liquefied Natural Gas Storage Tanks.

(A) GPSC LNG Limited ("GLL"-the SEZ Co-Developer) in a Special Economic Zone ("SEZ") at Mundra in November 2013; and

(B) Petronet LNG Limited ("PIL") at Dahej in December, 2013.

2.4 The Assessing Officer treated and assessed both the contracts as the works contract.

2.5 Broadly, the activities undertaken by the writ applicant under the aforesaid two contracts are divided into following three sub-heads;

(i) On-shore supply of services

(ii) Buying and selling of goods during the execution of the EPC contract for construction of tank

(iii) Erection/construction services provided.

2.6 The writ applicant was served with a notice issued by the respondent No.4 herein, i.e, the Deputy Commissioner of State Tax dated 6th April, 2018 in Form 309 for imposition of penalty under Section 34(12) of the GVAT Act. It appears from the materials on record that the respondent No.4, in the course of the assessment proceedings, issued notice for Auditing Assessment in the Form No.302 and called for certain necessary information. The information as called for was furnished by the writ applicant over a period of time.

2.7 Ultimately, the respondent No.4 passed the impugned assessment order in Form 304 (under the GVAT Act) dated 23rd March, 2020 assessing the total taxable turnover of the writ applicant at Rs.2,89,99,95,224/- and raised demand of tax to the tune of Rs.43,49,99,284/- along with interest to the tune of Rs.26,05,21,888/- and also imposed penalty at Rs.18,35,95,411/-

2.8 Being dissatisfied with the impugned assessment order passed by the respondent No.4, referred to above, the writ applicant is here before this Court with the present writ application.

3. Submissions on behalf of the writ applicant;

3.1 Mr. Prakash Shah, the learned senior counsel assisted by Mr. Dhaval Shah, the learned counsel appearing for the writ applicant vehemently submitted that the impugned order of assessment has been passed in gross violation of the principles of natural justice inasmuch as the Assessing Officer declined to even look into the judgments of the Supreme Court and this High Court on various issues. Mr. Shah would submit that he is very much conscious of the fact that the impugned assessment order is appealable as a statutory appeal has been provided under the GVAT Act before the First Appellate Authority. However, as the impugned assessment order is in gross violation of the principles of natural justice, this writ application, under Article 226 of the Constitution of India, may be entertained.

3.2 Mr. Shah, the learned senior counsel, in the course of the hearing of this matter, brought to our notice the findings recorded by the respondent No.4 in the impugned assessment order. According to Mr. Shah, in the impugned order of assessment, the following has been noted;

"5.20The petitioner has not submitted CA certified Trial Balance or Balance Sheet of Gujarat.

5.21 The petitioner failed to submit the proof like endorsement on invoices, dispatch of goods etc. used within SEZ. The said sales have been treated as local sales liable to @15%.

5.22 The petitioner has provided job-works services of Rs.2,47,43,62,483/- and paid applicable service tax. However, due to non-submission of proof of labour work (services) by virtue of provisions of Rule 18(AA) of GVAT Rules, 30% will be

considered as labour (services) component and balance 70% as materials.

5.23 The petitioner had made local sales of Rs.53,00,88,982/- on which VAT is paid @ 4% and additional tax @ 1%. However, due to non-submission of sales invoice, the same has to be assessed @ 15%.

5.24 The VAT credit of Rs.14,24,481.00 is not available to the Petitioner as purchases are made from Vendors with cancelled VAT registration."

3.3 Mr. Shah, the learned senior counsel vehemently submitted that the assessment of goods used in the execution of work for the co-developer of the special economic zone as local sale is absolutely contrary to the decision of this High Court in the case of State of Gujarat vs. Shandong Tiejun Electric Power Engineering Company Ltd., 2015 (11) TMI 1496-Gujarat High Court. Mr. Shah would submit that in the said decision of this High Court, it has been held that the condition of Rule 42 (2A) of the GVAT Rules is not mandatory. Mr. Shah would submit that the benefit of the exemption as claimed under Section 5A of the GVAT Act could not have been declined on the ground that the writ applicant failed to get the invoice endorsed from the SEZ authorities. Mr. Shah would submit that voluminous record in the form of various documents were placed before the respondent No.4. However, none of those documents have been looked into or referred to in the impugned assessment order.

3.4 Mr. Shah would submit that the impugned assessment order is not tenable in law to the extent it seeks to levy VAT on the value of the services provided. Mr. Shah further submitted that taxing the construction items under the residuary entry at the highest rate is contrary to the judgment of the Supreme Court in the case of State of Karnataka vs. Durga Projects, 2018 (10) GSTL 513 (SC).

3.5 Mr. Shah would submit that non-consideration of the submissions canvassed on behalf of the writ applicant not only demonstrates non-application of mind but also resulted in a serious miscarriage of justice. Mr. Shah, in the last, submitted that as held by this High Court in the case of U.M. Cables vs. Union of India, reported in 2017 347 ELT 78 (Guj.) and Larsen & Toubro Ltd. vs. Union of India, 2017 (52) STR 457 (Guj.) , despite the existence of alternate remedy in the form of a statutory appeal, a writ application can be entertained if the impugned order passed by the authority is wholly without jurisdiction or against the principles of natural justice or contrary to the statutory provisions of law. In such circumstances, referred to above, Mr. Shah prays that there being merit in his writ application, the same may be allowed and the impugned assessment order may be quashed and set aside. Mr. Shah prays that the matter deserves to be remitted to the respondent No.4 for fresh hearing with appropriate directions to take into consideration the documentary evidence and the case laws.

4. Submissions on behalf of the respondents;

4.1 On the other hand, this writ application has been vehemently opposed by Ms. Shah, the learned Government Pleader appearing for the State-respondents. Ms.

Shah has raised a preliminary objection with regard to the maintainability of this writ application on the ground that the writ applicant has an alternative efficacious remedy of preferring an appeal before the Appellate Authority. In such circumstances, according to Ms. Shah, this writ application may not be entertained and the writ applicant may be relegated to avail the alternative remedy of preferring an appeal.

4.2 Ms. Shah would submit that there is no merit worth the name in the vociferous submission canvassed on behalf of the writ applicant that the impugned order of assessment is contrary to law or has been passed in gross violation of the principles of natural justice. Ms. Shah would submit that all the relevant aspects of the matter have been duly considered by the respondent No.4 as an Assessing Officer and, ultimately the impugned order came to be passed. For any good reason, if the writ applicant is dissatisfied or aggrieved with such assessment order, then he may prefer an appeal as provided under the provisions of the GVAT Act.

4.3 Ms. Shah, in support of her preliminary objection as regards the maintainability of this writ application, has placed reliance on two decisions of the Supreme Court (i) Commissioner of Income Tax vs. Chhabil Dass Agarwal, 2014 (1) SCC 603 and (ii) Asst. Commissioner (Ct) Ltu, Kakinada vs. Glaxo Smith Kline Consumer Health Care Limited, JT 2020 (5) SC 64.

ANALYSIS

5. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether we should entertain this writ application in exercise of our writ jurisdiction under Article 226 of the Constitution of India or relegate the writ applicant to avail the statutory remedy of preferring an appeal as provided under the provisions of the GVAT Act.

6. Under the scheme of the Gujarat Value Added Tax Act, 2003 (for short "the GVAT Act") , there is a hierarchy of authorities before which the writ applicant can get adequate redress against the wrongful acts complained of. We first look into Section 73 of the Act, 2003, which reads thus;

"73. Appeal

(1) An appeal from every original order, not being an order mentioned in section 74, passed under this Act or the rules, shall lie,-

(a) If the order is made by a an Assistant Commissioner or Commercial Tax Officer, or any other officer sub- ordinate thereto, to the Deputy Commissioner;

(b) If the order is made by a Deputy Commissioner, to the Joint Commissioner;

(c) If the order is made by a joint Commissioner, Additional Commissioner or Commissioner, to the Tribunal.

(2) In the case of an order passed in appeal by a Deputy Commissioner or, as the case may be, by a Joint Commissioner, a second appeal shall lie to the Tribunal.

(3) Subject to the provisions of section 84, no appeal shall be entertained unless it is filed within sixty days from the date of communication of the order appealed against.

(4) No appeal against an order of assessment shall ordinarily be entertained by an appellate authority, unless such appeal is accompanied by satisfactory proof of payment of the tax in respect of which an appeal has been preferred:

Provided that an appellate authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order-

(a) Without payment of tax with penalty (if any) or, as the case may be, of the penalty, or

(b) On proof of payment of such smaller sum as it may consider reasonable, or

(c) On the appellant furnishing in the prescribed manner, security for such amount as the appellate authority may direct.

(5) The commissioner, on receipt of notice that an appeal against the order passed in appeal by the Deputy Commissioner or, as the case may be, by the Joint Commissioner has been preferred by the other party to the Tribunal may, within thirty days of receipt of the notice, file a memorandum of cross objection against any part of the order passed in appeal by the Deputy Commissioner or, as the case may be, by the Joint Commissioner and such memorandum shall be disposed of by the Tribunal as if it were an appeal.

(6) Subject to such rules of procedure as may be prescribed, an appellate authority may pass such order on appeal as it deems just and proper.

(7) Every order passed in appeal under this section shall, subject to the provision of sections 75, 78 and 79, be final.

7. Section 75 provides for revision. The same reads thus;

75. Revision. - (1) Subject to the provisions, of section 74 and to any rules made there under-

(a) the Commissioner of his own motion within three years or on an application made to him within one year from the date of any order passed by any officer appointed under section 16 to assist him, may call for and examine the record of any such order and pass such order thereon as he thinks just and proper [within five years from the date of the said order of the officer appointed under section 16 to assist him.]

(b) the Tribunal, on application made to it against an order of the Commissioner (not being an order passed under sub-section (2) of section 73 in second appeal or under clause (a) in revision on an application) within four months from the

date of the communication of the order may call for an examine the record of any such order, and pass such order thereon as it thinks just and proper.

(2) Where an appeal lies under section 73 and no appeal has been filed, no proceedings in revision under this section shall be entertained upon application: Provided that the proceedings in revision may be entertained upon an application where the applicant satisfies the Commissioner that he had sufficient cause for not preferring an appeal against the order in respect of which an application for revision is made.

(3) No order shall be passed under this section which adversely affects any person, unless such person has been given reasonable opportunity of being heard.[****]

(4) Where the Commissioner or the Tribunal rejects any application for revision under this section, the Commissioner or, as the case may be the Tribunal shall record the reasons for such rejection."

8. Section 78 provides for appeal to the High Court. Section 78 read thus;

"[78. Appeal to High Court. - (1) An appeal shall lie to the High Court from Court every order passed in appeal by the Tribunal, if the High Court is satisfied that the case-involves a substantial question of law.

(2) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard on the question so formulated and the respondent shall, in the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court, upon hearing of such case, shall decide the question so formulated or involved and deliver the judgement thereon containing the grounds on which such decision is founded.

(6) An appeal under this section may be filed within ninety days from the date of communication of the order of the Tribunal and shall be accompanied with a fee of rupees two hundred.

(7) In respect of such matters not provided in this section, the provisions of Code of Civil Procedure, 1908, which applies to the second appeal to High Court under section 100 of the said Code shall, so far as may be, apply to the second appeal under this section.]"

9. Thus, the perusal of the aforesaid provisions of law indicates that if the order is made by a Deputy Commissioner as in the case on hand, the appeal shall lie to the Joint Commissioner. In the case of an order passed in appeal by a Joint Commissioner, a second appeal would lie to the Tribunal. Ultimately, an appeal lies to the High Court from every order passed in appeal by the Tribunal, if the High Court is satisfied that the case involves a substantial question of law. Thus, the GVAT Act, 2003 provides for a complete machinery to challenge an order of assessment and the impugned order of assessment can only be challenged as prescribed by the Act and not by a writ application under Article 226 of the Constitution of India. It is a settled position of law that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of.

10. In the aforesaid context, we may refer to and rely upon the decision of the Supreme Court in the case of *Titaghur Paper Mills Co. Ltd. & Anr. vs. State of Orissa & Ors.*, 1983 (2) SCC 433, wherein it is observed that where a right or liability is created by a statute, which gives a special remedy for enforcing it, , the remedy provided by that statute must only be availed of. In para-11, the Supreme Court observed thus;

"11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under subsection (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under subsection (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* [(1859) 6 CBNS 336, 356] in the following passage:

There are three classes of cases in which a liability may be established founded upon statute. . . . But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* (1919 AC 368) and has been reaffirmed by the Privy Council in *AttorneyGeneral of Trinidad and Tobago v. Gordon Grant &*

Co. Ltd. (1935 AC 532) and Secretary of State v. Mask & Co. (AIR 1940 PC 105). It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine." (emphasis supplied) In the subsequent decision in Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors.¹², this Court went on to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute. "

11. We find reference of the decision of the Supreme Court in Titaghur Paper Mills Co. Ltd. (supra) in a recent pronouncement of the Supreme Court in the case of Asst. Commissioner (Ct) Ltu, Kakinada (supra) [the decision relied upon by Ms. Shah, the learned Government Plader]. We may refer to and rely upon the observations made by the Supreme Court in Asst. Commissioner (Ct) Ltu, Kakinada (supra), as contained in para-11;

"11. In the backdrop of these facts, the central question is: whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar⁸ and also Nivedita Sharma vs. Cellular Operators Association of India & Ors.). In Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors., the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise selfimposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In paragraph 7, the Court observed thus:

"7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court

under Article 226 and sought to reopen the decision of the Taxing Authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles.

But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up." (emphasis supplied)"

12. We may also refer to and rely upon the decision of the Supreme Court in the case of Commissioner of Income Tax vs. Chhabil Dass Agrawal (supra), more particularly, the observations as under;

"15. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: State of U.P. vs. Mohammad Nooh, AIR 1958 SC 86; Titaghur Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433; Harbanslal Sahnia vs. Indian Oil Corpn. Ltd., (2003) 2 SCC 107; State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499).

16. The Constitution Benches of this Court in K.S. Rashid and Sons vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh vs. Election

Tribunal, Kotah, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

(See: N.T. Veluswami Thevar vs. G. Raja Nainar, AIR 1959 SC 422; Municipal Council, Khurai vs. Kamal Kumar, (1965) 2 SCR 653; Siliguri Municipality vs. Amalendu Das, (1984) 2 SCC 436; S.T. Muthusami vs. K. Natarajan, (1988) 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, (1995) 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan, (2000) 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., (2001) 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra, (2001) 8 SCC 509; Pratap Singh vs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, (2003) 1 SCC 72).

17. In Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

"12. In Thansingh Nathmal v. Supdt. of Taxes, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

"7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

13. We should not ignore the observations made by the Supreme Court in Para-19 of Chhabil Dass (supra). We may quote thus;

"Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of

the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

14. The aforesaid observations of the Supreme Court, as contained in Para-19 definitely fortifies the submission of Mr. Shah, the learned Senior Counsel that if the statutory authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the High Court may not decline to entertain the writ application under Article 226 of the Constitution of India although an alternative remedy is provided in law. However, having regard to the overall facts of this case and the materials on record, we find it difficult in the first instance to take the view that the impugned assessment order has been passed in total violation of the principles of natural justice.

15. To sum it up, as in the instance case, the GVAT Act, 2003 provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the authorities, in our opinion, the writ applicant should not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution, more particularly, when the writ applicant has the adequate remedy open him by an appeal to the Joint Commissioner.

16. In the overall view of the matter, we are convinced that it is not a case wherein we should entertain this writ application under Article 226 of the Constitution of India despite there being an efficacious alternative remedy of filing an appeal.

17. Therefore, leaving all other questions and contentions available to the writ applicant to be canvassed on merits, we decline to entertain this writ application and relegate the writ applicant to avail the alternative remedy of filing an appeal under Section 73 of the GVAT Act, 2003.

18. Ultimately, if an appeal is filed by the writ applicant before the Appellate Authority, the Appellate Authority shall hear the appeal on its own merits without being influenced in any manner by any of the observations made by this Court in this order. It shall be open for the writ applicant to raise all contentions available to him in law including the grounds which have been urged before us and

pleaded in the memorandum of this writ application. This writ application, therefore, fails and is hereby rejected.