(2014) 08 CAL CK 0044

In the Calcutta High Court

Case No : W.P. 20169 (W) of 2014

RSI Private Limited APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35F, 35G
Constitution of India, 1950 — Article 141, 226, 227, 39
Representation of the People Act, 1951 — Section 100(1)(d)(iii), 83(1)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 22, 22(1)

Citation : (2015) 319 ELT 650

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Pranab Kumar Datta and Shovendu Banerjee, Advocates for the Appellant; S.B. Saraf and K.K. Maiti, Advocates for the Respondent

Judgement

Harish Tandon, J.—The petitioner has assailed the order dated 8th May, 2014 passed by the Customs, Excise & Service Tax Appellate Tribunal (in short "CESTAT"), Kolkata disposing of an application for stay filed in connection with the Customs Appeal No. C/A 187-193/2010 directing the petitioner to deposit a sum of Rs. 1.14 crores as condition precedent for maintaining the appeal.

2. Challenging the order of the adjudicating officer the said appeal came to be filed at the instance of the petitioner raising various issues including the issue that the petitioner''s company has been referred to Board for Industrial and Financial Reconstruction (in short "BIFR") and, therefore, the action for recovery of the amount is impermissible.

3. By an earlier order dated 13th November, 2013 passed by the CESTAT the same amount was directed to be deposited by the petitioner, which was assailed before this Court in W.P. 939 (W) of 2014. The attention of this Court was drawn to a judgement of the Apex Court in case of Sagarika Acoustronics Private Limited v. Union of India reported in 2010 (256) ELT A61 (SC) for the proposition

that once the company has been referred to BIFR, the Tribunal while considering an application for stay should record its findings on the net-worth of the company. After noticing the earlier judgement rendered by the Supreme Court in case of Metal Box India Ltd. Vs. Commissioner of Central Excise, Mumbai, , wherein it is held that Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short "SICA") does not put a fetter in taking an action for recovery of the customs duties or excise duties against the company, who has gone before the BIFR.

4. Both the aforesaid judgements were noticed by this Court at the time of disposal of the writ petition, being W.P. 939 (W) of 2014, and the order was set aside with specific direction upon the CESTAT to consider the same afresh within three weeks from the date of the communication of the order. The impugned order in this writ petition is the result of the said direction, which according to the petitioner, is more or less replica of the earlier order. In the impugned order the Tribunal maintains the quantum determined in the earlier order to be just and proper in the attending facts and circumstances without adverting to any observations made on the net-worth of the company.

5. As per the petitioner the BIFR entered into a reference and have declared the petitioner as a sick company and, therefore, directing the payment of an amount would result into an undue hardship and is contrary to the ratio laid down by the Supreme Court in case of Sagarika Acoustronics Pvt. Ltd. (supra).

6. According to the respondents, the CESTAT have considered the net-worth of the company and the impugned order cannot be said to be a replica of the earlier order.

7. The respective counsel have addressed more on the point of law than on the merit, as according to the petitioner the impugned order was passed in clear departure from the ratio laid down in Sagarika Acoustronics Pvt. Ltd. (supra), whereas the respondents did not agree with the aforesaid submissions, as according to them there was no ratio laid down in the said judgement and the Tribunal has proceeded on the proposition of law, which is operating in the field and does not require any interference in Writ jurisdiction. In addition to the same the respondents took a preliminary objection as to the maintainability of the writ petition because of the alternative efficacious remedy by way of an appeal provided under Section 35G of the Central Excise Act and in support thereof a reliance was placed upon a Division Bench judgement of Andhra Pradesh High Court delivered in case of M/s. Patel Engineering Limited Vs. The Commissioner of Central Excise, Customs and Service Tax, .

8. Let me first address the issue whether the Tribunal has in true spirit and purport showed its adherence to the directions passed by this Court in an earlier writ petition or has proceeded whimsically, arbitrarily and in clear defiance of the order.

9. If one perused and read the order dated 21st January, 2014 passed in W.P.

939 (W) of 2014, there is no ambiguity in arriving at the conclusion that the Court accepted the proposition of law laid down in Sagarika Acoustronics Pvt. Ltd. (supra), even after noticing the earlier judgement rendered in case of Metal Box India Limited (supra) directed the application to be heard afresh. The Tribunal relied upon the earlier order passed in case of Nicco Corporation Ltd. & Ors. v. CCE, Kolkata-(III) wherein the judgement rendered in case of Sagarika Acoustronics Pvt. Ltd. (supra) was quoted in full and observed that the said judgement was rendered in the facts and circumstances involved therein and has no binding efficacy. What is tried to state is that there is no ratio laid down by the Supreme Court in case of Sagarika Acoustronics Pvt. Ltd. (supra) and, therefore, does not bind either the Co-ordinate Bench, High Courts or the Tribunals. The Tribunal considered various judgements rendered on the issue of ratio decidendi, but misconstrued the same while arriving at its own conclusion. It would be appropriate to quote the excerpts from the judgement, which deals the said aspect for addressing the issue raised before this Court in this writ petition, which runs with these words:

"**** What is ''ratio decidendi'' has been explained by the Hon''ble Supreme Court in the case of Dalbir Singh and Others Vs. State of Punjab, as:

''...According to the well settled theory of precedents every decision contains three basic ingredients:

(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;

(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgment based on the combined effect of (i) and (ii) above.

For the purpose of the parties, themselves and their privies, Ingredient No. (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purposes of the doctrine of precedents, Ingredient No. (ii) is the vital element in the decision. This indeed is the ratio decidendi. (5) It is not everything said by a Judge when giving judgment that constitutes a precedent.''

14. Further a Five Member Bench of the Hon''ble Court Supreme Court in the case of Krishena Kumar and Others Vs. Union of India and others, observed as:

''18, The doctrine of precedent, that is being bound by a previous decision is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain ''''propositions wider than the case itself required.'' This was what Lord Selborne said in Caledonian Railway Co. v. Walker''s Trustees - 1982 (7) A.C. 259 and Lord Halsbury in QuInn. Leathem (1901) A.C. 495 (502). Sir Frederick Pollock has also said: ''Judicial authority belongs not to the exact words used in this or that judgment, not even to all the reasons given, but any to the principles accepted and applied as necessary ground of the decision.''

19. In other words, the enunciation of the reason or principle upon which a question before a Court has been decided is alone a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it. In the words of Halsbury, 4th Edn., Vol. 26, para 573:

''The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal''s duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a Tribunal for its judgment, all are taken as forming the ratio decidendi.''"

10. A judgement has three limbs. Firstly the facts involved therein are elaborately and elucidedly recorded which can be reasonably ascertained or inferred from a meaningful reading thereof; secondly the statement of law addressing the legal issues on the basis of the facts; and thirdly the ultimate decision or conclusion arrived by the Court granting relief to the party/parties.

11. In case of Dalbir Singh and Others Vs. State of Punjab, the Apex Court in unequivocal terms laid down that the principle of law stated in a decision attracts the doctrine of precedence and same operates as precedence for being followed by the High Court or the Tribunal or the sub-ordinate courts. The statement of law indirectly depends upon the facts involved in each case. An additional fact or a little difference of fact may result into an opposite conclusion or applicability of law. The ultimate decision is binding on the parties to the proceeding, but the abstract ratio decidendi ascertainable from the consideration of the judgement in relation to the subject-matter of the decision has a force of law and constitutes the ratio decidendi. The ratio decidendi is required to be ascertained upon reading the full judgement and not by taking one or two observations. The aforesaid proposition can be fortified from a Five Bench Judgement of the Supreme Court in case of Krishena Kumar and Others Vs. Union of India and others, .

12. In Sagarika Acoustronics Pvt. Ltd. (supra) the appellant therein was directed to deposit a sum of Rs. 1.40 crores and because of non-compliance thereof, the

appeal stood dismissed. The order was carried before the Bombay High Court by filing a writ petition, which stood dismissed with clear exposition of law that Section 22 of SICA does not cover the matter concerning Section 35F of the Central Excise Act, 1944 by relying the judgement of the Supreme Court rendered in case of Metal Box India Limited (supra). The matter was further carried to the Supreme Court and the order of the High Court was set aside with the following observations:

"Delay condoned.

Leave granted.

The appeal of the assessee has been dismissed by the Tribunal for non-deposit of Rs. 1.40 Crores. The assessee complains that it had already made an application pointing out to the Tribunal that the Company is under BIFR. According to the assessee, its application dated NIL September, 2005, being Modification Application No. ..../2005, is pending even today before the Tribunal. In the circumstances, we direct the Tribunal to decide the Modification Application No. ..../2005. We also want the Tribunal to record its findings regarding the net worth of the company. If the net worth of the company is found to be negative, then the Tribunal will consider restoration of the appeal to its file and in which event the matter will have to be decided on merits. If, however, the net worth is found to be a positive figure, the Tribunal will say so, give its reasons and dispose of the modification application in accordance with law.

The Civil Appeal is disposed of accordingly."

13. It would be more appropriate to record the ratio decidendi laid down in case of Metal Box India Limited (supra). In the said report a plea was taken that in view of Section 22 of the SICA the appellant therein is not obliged to deposit because of the immunity provided therein. The Court held that Section 22 of the SICA provides relief in a proceeding, which relate to - (a) winding up of the industrial company; (b) execution, distress or the like against any of the properties of the industrial company; (c) the appointment of a receiver in respect thereof, and (d) proceeding in regard to suit for recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company.

14. The Apex Court held that the situation under Section 35F of the said Act is not covered under Section 22 of SICA and, therefore, the order directing the deposit of the demand passed under Section 35F of the Central Excise Act is outside the purview of the said Act. In the said case there was no issue involved whether the net-worth of the company is one of the considerations under Section 35F of the Central Excise Act. In Sagarika Acoustronics Pvt. Ltd. (supra) the point whether Section 22 of SICA puts an embargo in directing the sick company to deposit the money under Section 35F of the Central Excise Act was not an issue, even the judgement does not suggest that there is a complete immunity to the sick company against any order passed under Section 35F of the said Act.

15. What has been held in Sagarika Acoustronics Pvt. Ltd. (supra) is that while granting waiver of the pre-deposit or the stay during the pendency of an appeal, if the net-worth of the company is negative, it would be unjust and cause undue hardship to the sick company to be asked to deposit money as condition precedent, which can be reasonably inferred from the meaningful reading of the paragraph, which says that if the net-worth of the company is found to be negative then the Tribunal will consider the restoration of appeal to its file and even the matter will have to be decided on merit. What was intended is the hearing of an appeal in the event the net-worth of the company is negative instead of dismissing the same for non-deposit of the amount, which is precondition to maintain the said appeal.

16. This Court does not find that there is any conflict on the law laid down in case of Metal Box India Limited (supra) and Sagarika Acoustronics Pvt. Ltd. (supra), as the point of law raised therein are not identical and similar. Even prior to Metal Box India Limited the Apex Court in case of Tata Davy Ltd. Vs. State of Orissa and Others, had an occasion to consider a plea whether Section 22 of the SICA have a primacy over Section 13A of the Orissa Sales Tax Act, 1947.The High Court of Orissa held that the provision of Section 22(1) of the SICA and Section 13A of the Orissa Sales Tax Act operates in separate and distinct fields and there is no irreconcilable conflict between the said two provisions.

17. The point, which arose therein, was whether the sick industrial unit is entitled to collect tax from the customers after the scheme is sanctioned and the Revenue can proceed to collect the tax without any leave obtained from the BIFR. It is held that though there is no fetter on the part of the Revenue to recover the amounts of tax, but such course of action can be initiated with the prior sanction or consent of the BIFR in these words:

"12. The Central Act is enacted under Entry 52 of List I of the Seventh Schedule. The said Entry 52 empowers Parliament to legislate in respect of ''industries, the control of which by the Union is declared by Parliament by law to be in the public interest''. The Central Act declares that it is ''for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution'', namely, ''that the ownership and control of the material resources of the community are so distributed as best to serve the common good'' and ''that the operation of the economic system does not result in the concentation of the wealth and means of production to the common detriment''. The Central Act does not impair or interfere with the rights of the States to legislate with respect to sales tax under Entry 54 of List II of the Seventh Schedule. In the larger interest of the industrial health of the nation, Section 22 of the Central Act requires all creditors seeking to recover their dues from sick industrial companies in respect of whom an enquiry under Section 16 is pending or a scheme is under preparation or consideration or has been sanctioned to obtain the consent of the said Board to such recovery. If such consent is not secured and the recovery is deferred, the creditors'' remedy is protected for the period of deferment is, by reason of sub-section (5) of Section 22, excluded in the computation of the period of limitation. The words ''any other law'' in Section 22 cannot, therefore, be read in the manner suggested by learned Counsel for the respondents.

13. The Corromandal Pharmaceuticals judgment dealt with a sick industrial company which was enabled to collect amounts like sales tax after the date of the sanctioned scheme. This court said, ''such amounts like sales tax, etc. which the sick industrial company is enabled to collect after the date of the sanctioned scheme, legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act.'' It added that the issue that had been arisen before it had not arisen in the case of Vallabh Glass Works. It did not appear therefrom or from any other decision of this Court or of the high Courts ''that in any one of them, the liability of the sick company dealt with therein itself arose for the first time after the date of sanctioned scheme. At any rate, in none of these cases a situation arose whereby the sick industrial unit was enabled to collect tax due to the Revenue from the customers after the sanctioned scheme but the sick unit simply folded its hands and declined to pay it over to the Revenue, for which proceedings for recovery had to be taken''. Clearly, the facts in the Corromandal Pharmaceuticals case differ from the facts of the Vallabh Glass Works case and those before us. The reference to the Corromandal Pharmaceuticals case is, therefore, inapposite.

14. We hold, in the premises, that the respondents cannot recover the aforementioned arrears of sales tax from the appellants without first seeking the consent of the said Board in this behalf."

18. Neither in case of Metal Box India Limited (supra) nor in Sagarika Acoustronics Pvt. Ltd. (supra) the judgement rendered in Tata Davy Ltd. was cited. There appears to be a conflict between Tata Davy Ltd. (supra) and the Metal Box India Limited (supra), as in case of former it is held that unless consent of the BIFR is obtained, the Revenue cannot take steps for realization of the tax; whereas in case of later, it is held that Section 22 has no bar to impose upon the Revenue in proceeding to recover the revenue from the defaulting persons.

19. This Court does not intend to deal with intricacies, as the parties even in earlier round of litigation appear to be in variation with regard to the imposition of condition for maintaining the appeal before the CESTAT under Section 35F of the Central Excise Act; when the net-worth of the company is negative or when the company is declared sick, whether the CESTAT can direct such sick industrial unit or company to deposit the same as condition precedent to maintain the said appeal.

20. In an appeal before the Supreme Court against an order of the High Court, which took note of the judgement rendered in case of Metal Box India Ltd. (supra), the Apex Court was aware of the earlier judgement and, therefore, had

implied notice thereof. It is inconceivable as contended by the respondents, that the subsequent judgement rendered in case of Sagarika Acoustronics Pvt. Ltd. (supra) did not take notice of the earlier judgement rendered in case of Metal Box India Ltd. (supra), even otherwise as held in preceding paragraphs that both the judgements stand on different points and there does not appear to be a direct conflict between the aforesaid two judgements.

21. A cumulative reading of the aforesaid judgements reveals that Section 22 of the SICA does not put an embargo against the Revenue in proceeding to recover the tax or duties, but when an appeal is taken before the Appellate Authority and an application for stay or waiver of the pre-deposit is filed, one of the considerations would be that in case of an industrial unit or the company having gone before the BIFR, the net-worth of the same is negative or not.

22. It is axiomatic to record that the impugned order is passed showing obstinacy than on recording the consideration required therefor. The Tribunal appears to have swayed by its own judgement rendered in case of Nicco Corporation Ltd. (supra), wherein the ratio laid down in case of Sagarika Acoustronics Pvt. Ltd. (supra) was misinterpreted or misconstrued than addressing the actual and real issue. It would not be wrong to say that even after laying down the correct proposition of law on the principle of ratio decidendi, the Tribunal has done just opposite to what has been laid down.

23. It would be appropriate to quote the observations of the Supreme Court in case of Markio Tado Vs. Takam Sorang, , wherein it is held in express terms that ignoring the law laid down by the Supreme Court and taking its own view, which is contrary to the ratio laid down therein, amounts to judicial adventurism and shakes the confidence reposed by a citizen of the country in these words:

"28. The Judge clearly ignored that the law declared by this Court is binding on all courts within the territory of India under Article 141 of the Constitution of India, and judicial discipline required him to follow the mandate of the Constitution. He entered into an impermissible exercise, and deleted the votes received by the appellant which he considered to be tainted votes. It is quite shocking to see that the learned judge has proceeded to delete the votes of the appellant from 8 polling stations, although the grievance was only about Ruhi and 7 Roing Polling Stations. By making these deductions, he came to the conclusion that respondent No. 1 had received 826 votes more. As can be seen from paragraph 28 of the judgment, rendered in Markio Tado v. Takam Sorang, that at best the case of the first respondent was that there were double entries of voters in 1304 names. The allegation was only with respect to two polling stations. In those polling stations, the appellant had received 1873 votes. Even if these 1304 votes were to be deleted, it would not affect the result materially since the appellant had won with a margin of 2713 votes. The learned judge, therefore, ignored that even if the ground of improper reception of votes under section 100(1)(d)(iii) was to be taken, respondent 1 had failed to establish that the result of the election of the appellant had been materially affected by such improper reception of votes. The decision of the learned judge was therefore clearly flawed and untenable.

29. Thus, the learned judge went into the counterfoils of the voters in spite of the fact that this court had already ruled in the judgment in Markio Tado v. Takam Sorang, that in the facts of the present case, no case was made out for calling of the counterfoils. It is not that he was unaware of the judgment rendered by this court. He referred to this judgment in Para 9(i) by stating that CA No. 1539 of 2010 was preferred against his judgment and order dated 14.9.2010. Thereafter, he specifically noted "the said Civil Appeal was allowed vide judgment and order dt. 2.2.2012 dismissing the aforesaid M.C. (EP) No. 5 (AP) of 2010 under Section 83(1) of the R.P. Act as reported in Markio Tado v. Takam Sorang". Thereafter, however he proceeded to act exactly contrary to the direction emanating from the dismissal of M.C. (EP) No. 5 (AP) of 2010, which amounts to nothing but judicial indiscipline and disregard to the mandate of Article 141 of the Constitution of India. This is shocking, to say the least, and most unbecoming of a judge holding a high position such as that of a High Court Judge. We fail to see as to what made the judge act in such a manner, though we refrain from going into that aspect.

30. Before we conclude, we may state that it is unfortunate that such acts of judicial impropriety are repeated in spite of clear judgments of this court on the significance of Article 141 of the Constitution. Thus, in a judgment by a bench of three judges in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd., this court observed:

''32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.''

31. We may as well refer to Para 28 of the State of West Bengal & Ors. v. Shivanand Pathak and Ors., wherein this court observed:

''28. If a judgment is overruled by the higher court, the judicial discipline requires that the judge whose judgment is overruled must submit to the judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment.'' "

24. Even more than a decade ago the Three Bench of the Supreme Court in case of Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another, deprecated the tendency of the subordinate Courts or the Tribunals in not applying the settled principles of passing the whimsical orders in contrary to the law laid down by the Supreme Court in these words:

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

25. This Court does not feel that any further deliberation on the aforesaid issue is required, as the principle of law enunciated by the Supreme Court in the above noted reports echoed the voice that the High Court or the subordinate Courts or the Tribunals including the authorities are bound by the law decided by the Supreme Court and any departure or non-adherence therefrom would result into judicial adventurism and would disturb the confidence reposed by the citizen of the country.

26. The impugned order does not suggest that any finding is recorded in the light of the judgement rendered in case of Sagarika Acoustronics Pvt. Ltd. (supra) and there is no hesitation in my mind to arrive at the conclusion that the Tribunal has not taken into consideration the directions passed by this Court in an earlier writ petition and, therefore, the contention of the petitioner in this writ petition that it is the replica of the earlier decision cannot be brushed aside.

27. The impugned order completely lacks the finding on the net-worth of the company, which is one of the factors to be considered at the time of consideration of an application for stay or waiver of pre-condition deposit under Section 35F of the Central Excise Act.

28. There is no absolute bar in entertaining the writ petition despite the availability of a remedy by way of an appeal or otherwise provided under the statute. The Writ jurisdiction is based on rule of discretion than of compulsion. The power cannot be circumscribed in a narrow compass, as the language under Article 226 of the Constitution is designedly couched in a broader language and not confining it only to the power to issue a prerogative Writ as understood in English Law, but can reach where the injustice is found.

29. The scope under Article 226 of the Constitution of India and the power of the High Court to issue a Writ of Mandamus or Writ in the nature of Mandamus have been explained in case of Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, in the following words:

"18. The first contention urged by learned counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission- both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In Dwarkanath v. ITO this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts ''to reach injustice wherever it is found'' and ''to mould the reliefs to meet the peculiar and complicated requirements of this country.'' In Hochtief Gammon v. State of Orissa this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the government or its officers.

19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in Mayor of Rochester v. Regina said:

''But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen''s Bench. That court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute: Comyn''s Digest, Mandamus (A)...Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable.''

The principle enunciated in the above case was approved and followed in King v. Revising Barrister for the Borough of Hanley. In Hochtief Gammon case this Court pointed out (at p. 675 of Reports: SCC p.656) that the powers of the courts in relation to the orders of the government or an officer of the government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In Padfield v. Minister of Agriculture, Fisheries and Food the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister''s discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In Halsbury''s Laws of England, 4th edn., Vol. I, para 89, it is stated that the purpose of an order of mandamus.

Is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

30. The sheet anchor of the arguments advanced by the respondents on the issue of availability of the alternative remedy is founded on the Division Bench judgement of Andhra Pradesh High Court in case of M/s. Patel Engineering Limited Vs. The Commissioner of Central Excise, Customs and Service Tax, . In paragraph 4 of the said judgement the Division Bench held that there is no absolute bar in entertaining the writ petition despite the alternative remedy and the power to interfere is embodied or inbuilt in the Article 226 of the Constitution of India in these words:

"This decision requires adjudication at the first instance because ordinarily, statutory remedy is not ignored by the writ Court in exercise of discretion under

Articles 226 and 227 of the Constitution. It is settled position of the law that High Court imposes self-restriction in entertaining application in public law field without requiring litigant to resort to alternative remedy, wherever available. The nature and extent of power of High Court under Articles 226 and 227 of the Constitution has been firmly established and explained by the Apex Court umpteen number of times and no one can dispute that power is always there. It is also settled that the High Court in case of breach of fundamental right of a private individual, constitutional right of private individual of public importance, violation of principles of natural justice and action taken without having any jurisdiction or total failure of exercise of jurisdiction entertains writ petition overlooking alternative remedy."

31. The Division Bench did not lay down that the writ petition should not be allowed to remain in the docket of the Court because of the alternative remedy, but it is held that the power of judicial review is discretionary and depends upon the facts of each case.

32. This Court, therefore, does not find that the present case is of such nature, where this Court should refuse to exercise its discretion in the facts and circumstances involved in this case.

33. On the observations above, the order impugned is set aside.

34. The CESTAT is directed to consider the application afresh in the light of the law laid down in case of Sagarika Acoustronics Pvt. Ltd. (supra) and the observations made in this order, and shall restrict its decision on the net-worth of the company on the basis of the records and materials already produced by the petitioner. It is expected that the Tribunal would complete the aforesaid exercise within three weeks from the date of the communication of this order.

35. The writ petition is thus disposed of.

36. There will be no order as to costs.

