

**(1990) 10 MAD CK 0047**

**In the Madras High Court**

**Case No : Writ Appeal No. 865 of 1989 to 875/89**

Southern Engg. Industries

APPELLANT

Vs

Supdt. of C. Ex.

RESPONDENT

**Date of Decision : 13-10-1990**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 323A, 323B

**Citation : (1991) 52 ELT 373**

**Hon'ble Judges : T. Sathiadev, Acting C.J.; Padmini Jesudurai, J**

**Bench : Division Bench**

**Advocate : M/s R. Thiagarajan and T. Muthuraman, for the Appellant; Mr. T. Somasundaram, Addl. Central Govt. Standing Counsel, for the Respondent**

## **Judgement**

Sathiadev, A.C.J.

1. Appeals under clause 15 of the Letters Patent against the order of the Hon''ble Mr. Justice Bakthavatsalam dated 21-9-1989 and made in the

exercise of the Spl. Original jurisdiction of the High Court in W.P. numbers 6838/82, 7507/82, 7500/82, 7501/82, 7503/82, 7505/82, 7506/82,

7508/82, 7509/82, 7511/82, and 7513/82 respectively on the file of this Court.

ORDER

This Writ Appeals coming on for orders as to admission on this day upon perusing the grounds of appeal, the order of the Hon''ble Mr. Justice

Bakthavatsalam Court in W.P. Nos. 6838/82, 7507/82, 7500/82, 7501/82, 7503/82, 7505/82, 7506/82, 7508/82, 7509/82, 7511/82 and

7513/82 respectively and all other papers material to these cases and upon hearing the arguments of Mr. R. Thiagarajan for M/s. R.

Mohanasundaram and T. Muthuraman, Advocate for the Appellant in each of the Writ Appeals and of Mr. T. Somasundaram, Addl. Central

Govt. Standing Counsel on behalf of the respondents in all the Writ Appeals, the Court made the following Order :-

On the learned Single Judge holding that the appellants are having alternative remedies under the Central Excise and Salt Act and more particularly

after the constitution of the Tribunal which had come into existence since 11-10-1982, these Writ Appeals are preferred.

2. The writ petitions were filed in 1982 after the adjudicating authority i.e. the Assistant Collector of Central Excise, Coimbatore, had passed

orders holding that the disputed items would come under Tariff Item 30-D of the Central Excise Tariff.

3. Earlier to that order, some of the appellants had filed W.P. No. 5169/81 etc. batch and this Court by order dated 12-7-1982 dismissed the writ

petitions directing the parties to approach the adjudicating authority and stating that, if they are unsuccessful, then they could file writ petitions in this

Court.

4. Learned Counsel Mr. R. Thyagarajan for the appellants would submit that such an opportunity having been given, and when the matter involved

interpretation of the relevant items under the Central Excise Tariff, and this Court having entertained the matter in 1982 could not have dismissed

the writ petitions after seven long years, by directing the parties to seek for alternative remedies. He also submits that the points involved are only

confined to the interpretation of the concerned items under the Central Excise Tariff i.e. whether the product manufactured would fall either under

Tariff Item 30-D or Tariff Item 68 and that this is an aspect which ought to have been gone into by the learned Judge and that he was not correct in

holding that this Court could not exercise its jurisdiction in a manner of this kind. It is contended by him that the learned Judge proceeded on the

basis that the writ petitions are not maintainable in spite of referring to the decision in W.P. No. 9865 of 1987 dated 26-9-1988.

5. A careful reading of the order would show that rather the learned Judge had relied upon the decision of the Division Bench of this Court in CMP

No. 15166/87 in WA No. 1730/87 dated 25-10-1988 and other decisions referred to in the order wherein it was held that the jurisdiction of this

Court had not been specifically taken away by the amendment to the excise act.

6. Being conscious of the fact that this Court has the necessary jurisdiction, the

learned Judge had considered that after the Tribunal had been constituted and when effective remedies are existing, it would be appropriate for the appellants first to have the appellate authority for suitable

orders and if unsuccessful, then approach the Tribunal. Nowhere the learned Judge held that the Writ Petitions are not maintainable.

7. In support of the plea that even though alternative remedy is there, still when the aspect of interpretation is involved, this Court could entertain

Writ Petitions; the learned Counsel refers to the decision in *Asstt. Collector of Central Excise, Custom House, Pondicherry and another v. New*

*Horizon Sugar Mills (P) Ltd. Pondicherry 1980 ELT 10 (Mad.)*. But it was a case wherein the alternative remedy available was by way of a suit

and the Division Bench held that when only interpretation of the statutory notification involved, the aggrieved party was justified in invoking Art.

226 of the Constitution and that the right to file a suit is no bar for granting relief under the said article. It has nowhere been held that if

interpretation of the clause or item or a provision of law is involved, then the constituted authority or forums cannot render a decision thereon.

Power to strike down as invalid is different from interpreting a provision.

8. But in the instant case, the alternative remedy available is one which had been there even before amendment of Art. 323A and 323B of the

Constitution. After the amendment, a Spl. Tribunal had come into existence to take up the matter further if relief is not granted by the appellate

authorities. Learned Counsel Mr. Thiagarajan would point out that the law to exclude jurisdiction of this Court, as found in Act 13 of 1985 framed

under Art. 323A(2) had not been enacted in the Act and hence the learned Judge had not noted this distinction. He submits that existence of

alternative remedy can be taken into account only while entertaining Writ Petitions and not at final disposal stage.

9. It is true that the exclusion of the jurisdiction has found under Act 13 of 1985 is not found in Act 1/1944. But as pointed out by the Supreme

Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, in matters involving revenue,

when statutory remedies are available, then it is proper to direct the parties to seek such remedies, be it in admission stage or at final hearing stage.

10. The next decision relied upon is in *Sainet Pvt. Ltd. and another v. Union of*

India 984 (18) ELT 141 (Bom.) wherein the Division Bench held

that failure to follow the statutory remedy is a circumstance to be considered at the time of hearing and that the existence of alternative remedy is

no bar in a case where interpretation of fiscal statutes is involved.

11. Yet, in a matter wherein not only the interpretation and scope of the relevant item in the Customs Tariff are involved, and when it would also be

necessary to find out factually as to whether in respect of the kind of monobloc pumpsets manufactured by the appellants, they would come under

either one or other of the items : such an exercise must first be done by the adjudicating authority and then by the appellate authority and thereafter

by the Tribunal which had been specifically constituted for those purpose.

12. Yet, the Learned Counsel is still persistent in pleading that, after entertaining the Writ Petitions in 1982, at the time of the final hearing the Id.

Judge should not have directed the parties to exhaust the alternative remedies, and at this distance of time, Appellants are deprived of exhausting

alternative remedies. No doubt, this matter had been pending in this Court for seven long years and that the delay was not their fault. On the

Tribunal coming into existence on 11-10-1982, the respondents ought to have at once moved this Court to get suitable orders by pointing out,

what they have now argued. Further, having claimed that alternative remedy existing, they cannot plead that the appeals which they may file are

barred by limitation.

13. Hence when respondents had failed to do what they ought to have done in 1982 or 1983 and because of it, this Court having kept the writ

petitions pending for seven years, a direction is issued to the appellate authority to condone the delay in filing appeals by treating the periods

involved as constitution as done in good faith.

14. Therefore, if the appellants present their appeals against the impugned orders to the Appellate authority within four weeks from the date of

issue of order copy the Appellate authority is directed to entertain them and, thereafter dispose them of on merits within three months from the date

of presentation of the appeals.

15. With the above directions, the Writ Appeals are dismissed.