

(2012) 09 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 10385 of 2012

Swaminarayan Sarvopari Siddhant Digvijay Trust and Another **APPELLANT**
Vs

State of Gujarat and Another **RESPONDENT**

Date of Decision : 21-09-2012

Acts Referred:

Bombay Stamp Act, 1958 — Section 27, 31, 32(A)(ii), 32A, 39
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63
Constitution of India, 1950 — Article 14, 226, 227
Customs Act, 1962 — Section 129, 129E, 20, 23, 24

Citation : (2013) 1 GLR 89

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Ravindra Shah with Mrs. Kanan R. Shah, for the Appellant; A.N. Shah, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

K.M. Thaker, J.—The petitioner-Trust is seeking below-mentioned relief in present petition:

7(A) To issue a writ of mandamus/certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned notice dated 23-1-2012 at Annexure-D to the petition and the impugned order dated 1-3-2012 at Annexure-F to the petition declaring it to be ultra vires, void ab initio and non-est;

1.1. The petitioners are aggrieved by notice dated 23-1-2012 whereby the petitioner was, vide Notice issued under Sec. 39(1)(b) of the Bombay Stamp Act, 1958 (hereinafter referred to as "the Act"), asked to show-cause as to why deficient stamp duty in the sum of about Rs. 16.86 lacs should not be recovered with appropriate fine.

1.2. By the said notice, the petitioner was also given opportunity to appear before the authority and submit its objections against the said demand.

1.3. The petitioner is also aggrieved by order dated 1-3-2012 whereby the petitioner has been directed, in pursuance of the proceedings conducted in connection with the above-referred notice dated 23-1-2012, to pay Rs. 16,86,170/- towards deficient stamp duty and Rs. 250/- towards fine.

1.4. The said order also informed the petitioner that an appeal-application against the order can be preferred (under Sec. 53 of the Act) within 90 days before the competent authority.

1.5. However, instead of approaching the competent authority under Sec. 53 of the Act, the petitioner has chosen to prefer present petition.

So far as the facts leading to and involved in present petition are concerned, the petitioner has stated, inter alia, that somewhere in September, 2011, the petitioner, a body which is registered as a trust under the provisions of Bombay Public Trust Act, 1950, purchased certain agricultural land bearing Sr. No. 679 paiki 1 and paiki 2 at village Palanpur.

1.6. The petitioner has claimed that it purchased the said land for consideration of Rs. 55.40 lacs and executed a sale-deed which was presented for registration, and it came to be registered at Registration No. 4739.

1.7. It is also clarified by the petitioner that the original sale-deed is still in the custody of respondent No. 2. The petitioner has also claimed that on the basis of the sale consideration mentioned in the sale-deed, requisite stamp duty was calculated and paid by the petitioner at the relevant time.

1.8. Subsequently, after verification and scrutiny of the said document, the concerned officer formed a tentative and prima facie opinion that the petitioner had not paid requisite stamp duty as per the market value of the property and in accordance with applicable provisions of the Act.

1.9. Therefore, a show-cause notice dated 23-1-2012 was issued and the petitioner was given opportunity to show-cause as to why deficient stamp duty, as mentioned in the notice, should not be recovered. The notice informed the petitioner, inter alia, that the market value of the property would be Rs. 4,99,40,450/- and that therefore, the petitioner was required and obliged to pay Rs. 19,57,670/- towards stamp duty whereas the petitioner had paid only Rs. 2,71,500/- (i.e. affixed stamp in the value of Rs. 2,71,500/-) and that therefore, it was obliged to pay deficient stamp duty at Rs. 16,86,170/-.

1.10. The said notice dated 23-1-2012 also offered opportunity to the petitioner to submit his reply and appear for hearing on 2-2-2012 before the Collector (Stamp).

1.11. On 2-2-2012 the petitioner made request for more time. The request was accepted and the hearing was adjourned to 13-2-2012.

1.12. On 13-2-2012, the petitioner filed its written submissions - reply before the authority wherein the petitioner claimed that it was not required to pay the

stamp duty at the rate claimed under the said notice or at any other rate. Subsequently, after considering petitioner's submissions and objections, the competent authority passed the order dated 1-3-2012 which is challenged in present petition. The petitioner has alleged that the authority passed the impugned order dated 1-3-2012 in violation of principles of natural justice.

1.13. Now, though statutory remedy under Sec. 53 of the Act is available against the said order, instead of availing the said statutory remedy in violation of principles of natural justice, the petitioner wants to challenge the decision of the adjudicating authority by way of a writ petition.

1.14. The petitioner does not want to avail that remedy on the ground that the said provision prescribes a condition that the applicant-appellant should make pre-deposit of 25% amount out of the adjudicated liability. Therefore, instead of approaching the authority/remedy prescribed under Sec. 53 of the Act (against the order of first adjudicating authority), the petitioner has preferred present petition.

1.15. The petitioner expects that discretionary jurisdiction may be exercised and it may not be relegated to the said statutory remedy so that the petitioner can avoid the obligation to deposit part of the amount which is determined after adjudication.

2. Mr. Shah, learned Advocate, has appeared for the petitioner and Mr. Yagnik learned A.G.P. has appeared for respondent authority, on advance service of the petition to the office of Government Pleader.

3. Mr. Shah, learned Counsel for the petitioner, submitted that the impugned order is passed without affording opportunity of hearing to the petitioner, and that therefore, it is passed in violation of principles of natural justice. He further submitted that the impugned order has been passed without application of mind to the relevant facts or to the applicable provisions under the Act and the Rules. He submitted that the provisions contained under Sec. 32(A)(ii) are not complied and the provision under Rule 8 of Stamp Valuation Rules (hereinafter referred to as "the Rules") is not observed. Mr. Shah, learned Counsel for the petitioner, also challenged the authority and jurisdiction of the Dy. Collector to examine, hear and decide the issue. He also submitted that the impugned order has been passed before, and without impounding, the disputed document, though as per the provisions under the Act, the impugned order could not have been passed without impounding the document. He also submitted that in the impugned order the authority has made reference of two resolutions, however, said resolutions were not supplied to the petitioner. Mr. Shah, learned Advocate, also submitted that by the impugned order, the first adjudicating authority has demanded stamp duty at a rate which is approximately 9 times than the rate at which the petitioner paid the stamp duty. He also submitted that the remedy provided under the Act i.e. under Sec. 53 of the Act is illusory and not real and effective remedy. Mr. Shah further submitted that since the provision under Sec. 53 of the

Act obliges the petitioner to pay 25% of the amount determined by the first adjudicating authority as condition for maintaining the proceedings under Sec. 53 of the Act, the petitioner is not obliged to approach the competent authority under Sec. 53 of the Act against the order of the first adjudicating authority and petitioner can maintain a petition against the order of first adjudicating authority without first approaching the alternative remedy provided under the Statute. He also submitted that the time-limit prescribed under the Act for challenging the order of the first adjudicating authority before the competent authority under Sec. 53 of the Act has expired. The learned Counsel for the petitioner also submitted that after the registration of the document, the impugned demand could not have been raised and impugned order could not have been passed. The learned Counsel for the petitioner relied on below mentioned decisions, so as to support his submissions:

- 1) Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, .
- (2) State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, .
- (3) J.M. Baxi and Co. Vs. Commissioner of Customs and Another, .
- (4) M.G. Abrol Vs. Shantilal Chhotalal and Co., .
- (5) Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another, .
- (6) Janardan Jaishankar Jokharkar and Another Vs. State of Gujarat and Others,
- (7) Himanshu S. Nanavati Vs. Ahmedabad Municipal Corporation, .
- (8) Gondal Vibhag Nagrik Sahakari Bank Ltd. v. Collector & Asstt. Supdt. of Stamps, 1987 (2) GLH (UJ) 11: 1987 GLT 161.
- (9) Diwan Kalusha Ahmedsha and Others Vs. Mr. Vanikar, Collector of Kaira, .

3.1. The respondents have opposed the petition and learned A.G.P. has contended that since statutory remedy constituted under the Act is available, the petition is not maintainable and does not deserve to be entertained. He also submitted that the allegation about violation of principles of natural justice is incorrect and the petitioner was afforded sufficient opportunity of hearing. He also submitted that the order of the first adjudicating authority has been passed after having regard to the relevant facts as well as applicable provisions and the order is neither contrary to the applicable provisions nor in disregard to the relevant facts available on record before the adjudicating authority. He also submitted that the petitioner's objection to approach the statutory alternative remedy on the ground that it is not effective but is illusory remedy is unjustified and the petitioner should approach the authority constituted under the Act.

4. I have heard learned Counsel for the petitioner at great length and perused the record, and I have considered the submissions as well as the facts and

documents available on record.

5. Since, the learned Counsel for the petitioner has alleged that impugned order is passed in violation of principles of natural justice, it would be appropriate to examine the said allegation, at the outset.

Re.: Alleged violation of Principles of Natural Justice:-

5.1. On this count, it is necessary to note that before the impugned order came to be passed, the petitioner was visited with a show-cause notice dated 23-1-2012.

5.2. In the said notice, the petitioner was informed about the tentative and provisional view of the authority; viz. stamp duty was short paid and the valuation of the property in question was not proper and was not based on the correct market value of the property.

The petitioner was also asked to remain present -- with necessary documents -- for hearing before the authority on the date and at the place and time mentioned in the notice (i.e. on 2-2-2012).

The said aspect demonstrates and establishes that proper and sufficient notice was issued to the petitioner and opportunity of hearing was also offered.

5.3. It also emerges from the record that, on the scheduled date for hearing (i.e. 2-2-2012), the petitioner requested for more time/adjournment and the authority accepted the request and adjourned the hearing to 13-2-2012.

5.4. Then, on the said date (i.e. 13-2-2012), the petitioner tendered its written submissions which was accepted on record and the order reflects that the written reply/submission has been duly considered by the authority while passing the order.

5.5. Thus, after receiving notice to appear for hearing before the authority and after asking for more time, which was accepted and the hearing was adjourned, on the next date (i.e. on 13-2-2012), the petitioner preferred to submit written submissions/reply.

5.6. From the record, including the observations in the order, it does not emerge that opportunity of hearing was not granted, however, if, for testing the allegation the record of petition and the order are closely examined, then also, nothing is shown to this Court to establish or demonstrate or even suggest that on 13-2-2012, after having filed the written submissions, the petitioner or his representative desired (and had requested for opportunity) to make, arguments/submissions (i.e. to advance oral arguments) in addition to written submissions/reply, but the authority refused to hear the submission and the opportunity was denied. Likewise, there is nothing on record to also demonstrate or suggest that even after issuing notice calling the petitioner to remain present for hearing, the opportunity was denied.

5.7. Furthermore, as mentioned earlier, the petitioner has not even claimed, and it is not the petitioner's case, that on the scheduled date for hearing (i.e. 13-2-2012) after tendering the written submissions/reply, request for more time to also address the authority and to advance arguments (to make oral submissions/arguments) in addition to written submissions/reply was made, but such request was not granted and it was rejected. Any material to demonstrate rejection of such request is not placed on record.

5.8. Thus, when opportunity to appear for hearing with supporting documents was granted and when adjournment, as requested for was also granted and when after seeking adjournment the petitioner voluntarily chose to tender written submissions before the authority, then the petitioner is now not justified in alleging that the order is passed in violation of principles of natural justice.

5.9. The learned Counsel for the petitioner, after vehemently contending that the impugned order is in violation of natural justice and upon being asked for explanation as to the observations in the order, shifted his stand from contending that petitioner was denied opportunity of defence to contending that personal hearing was not granted.

5.10. On that count also, the Court has noticed from the record that it was the petitioner, who after seeking adjournment on 2-2-2012, on the next date, chose and opted to tender written submissions, and that therefore, the petitioner is not right and justified in the said allegation as well.

5.11. It is relevant to recall that initially by virtue of notice dated 23-1-2012 time until 2-2-2012 was granted and the petitioner was offered opportunity to remain present before the authority for hearing, with all relevant documents, on 2-2-2012. Then on the scheduled date for hearing, adjournment was requested for by or on behalf of the petitioner. The said request was also granted and the hearing proceedings was adjourned to 13-2-2012. On the said date (i.e. 13-2-2012), the petitioner chose to file written submissions, and as observed hereinabove earlier, nothing is shown from the record to even suggest, much less establish, that after filing written submissions any request for opportunity to make further submissions (i.e. oral arguments in addition to the written reply/submissions) was made but was denied/rejected.

5.12. On this count, it is also pertinent that after the petitioner's request for adjournment on 2-2-2012, that the hearing proceedings was adjourned to 13-2-2012 and the date of the impugned order is 1-3-2012 i.e. after 16 days.

5.13. On 13-2-2012 or at any time thereafter, during said 16 days, until 1-3-2012, the petitioner did not file/submit any application/complaint alleging that opportunity of hearing was not offered. The allegation appears to be an afterthought.

5.14. Even after 1-3-2012 until the petition came to be filed, such allegation or complaint was never made. Such allegation is made for the first time in the

petition.

5.15. When the opportunity to appear before the authority for hearing with necessary documents and material and to argue the case was granted, and for that purpose, date and time were also informed and when further time/ adjournment was requested for by/on behalf of the petitioner, the said request was also granted and when on the next day, the petitioner, on his own choice opted and preferred to tender written submissions, which are duly recorded and considered by the authority, it cannot be accepted that the petitioner is denied opportunity of personal hearing and defence.

5.16. It emerges from the record and from the above-mentioned events and details, that the petitioner's allegation that the impugned order is in violation of principles of natural justice and the petitioner has been denied opportunity of personal hearing is not correct or sustainable and is unsubstantiated afterthought which is not made out from the record and is not justified. Therefore, the said allegation cannot be accepted and sustained and the impugned order cannot be faulted on the said ground.

6. Re.: Alternative Remedy:

6.1. The order which is impugned in present petition is passed by the first adjudicating authority and against the order by the first authority, a remedy and forum are provided under the Act. Therefore, instead of invoking prerogative and discretionary jurisdiction of this Court under Art. 226 of the Constitution of India, the petitioner should approach the statutory forum-authority.

6.2. The Legislature has provided remedy under Sec. 53 of the Act, and constituted higher authority before whom the proceedings against the order of the first adjudicating authority can be maintained and the order can be challenged.

6.3. However, instead of approaching the statutory remedy-authority, the petitioner has preferred present petition against the order of first adjudicating authority and the petitioner has claimed and asserted that the forum constituted and remedy provided by the Act is illusory and is not efficacious, and therefore, petition deserves to be entertained and the petitioner need not go before the authority under Sec. 53 of the Act.

6.4. In view of the objections and submissions on behalf of the petitioner, it is relevant to take into account the provisions under Sec. 53 of the Act. Section 53 reads thus:

53. Control of and statement of case to Chief Controlling Revenue Authority: (1) The powers exercisable by a Collector under -- Chapter III (except sub-sec. (3) of Sec. 32A), Chapter IV and Chapter V and under clause (a) of the first proviso to Sec. 27 shall in all cases be subject to the control of the Chief Controlling Revenue Authority:

[Provided that the Chief Controlling Revenue Authority shall not entertain an application made by a person under sub-sec. (1) unless -

(a) such application is presented (within a period of ninety days) from the date of order of the Collector.

(b) such person deposits twenty-five per cent of the amount of duty or as the case may be, amount of difference of duty payable by him in respect of subject-matter of the instrument for which application has been made:

Provided further that where in any particular case, the Chief Controlling Authority is of the opinion that the deposit of the amount by the applicant may cause undue hardship to him, the authority may in its discretion, either unconditionally or subject to such conditions as it may think fit to impose, dispense with a part of the amount deposited, so however, that the part of the amount so dispensed with shall not exceed fifty per cent of the amount deposited or required to be deposited.]

(2) If any Collector, acting under Sec. 31 (Sec. 32A), Sec. 39 or Sec. 40, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

6.5. The writ proceedings are discretionary remedy and when the relevant Act itself provides a remedy and forum where the order of first adjudicating authority can be challenged i.e. when statutory remedy is made available, the Court exercising prerogative and discretionary writ jurisdiction would be loath to entertain a writ petition and would be reluctant or extremely slow in deviating from the accepted principle and the wisdom to not entertain a writ petition and the Court would not render the statutory remedy otiose.

The petition, for the foregoing reasons, does not deserve to be entertained at this stage and the Court would rather relegate the petitioner to the remedy/forum prescribed and constituted under the Act.

7. However, so as to assert that it need not approach statutory remedy, but it can maintain petition, the petitioner, as mentioned earlier, alleged violation of principles of natural justice. Thus, so as to examine the petitioner's request to entertain the petition, the Court, at the outset, considered the petitioner's allegation about violation of principles of natural justice and it is noticed that the said allegation is not correct or justified or sustainable and the said ground is not available to the petitioner for maintaining writ petition instead of approaching the statutory remedy and forum constituted by the Act.

7.1. Therefore, the learned Counsel for the petitioner has (to claim that it need

not approach statutory remedy but can maintain petition) contended that the said remedy under Sec. 53 of the Act is not efficacious and is illusory because it imposes requirement of depositing 25 % of the adjudicated demand.

Re.: Statutory Remedy, Whether Onerous?:

8. The ground on which the statutory remedy is frowned upon by the petitioner (on the allegation that it is illusory) is the condition which requires pre-deposit of part of duly adjudicated demand i.e. dues towards tax/duty liability determined after adjudication. The actual purport of the submission is that the remedy is onerous.

8.1. On examination of the provision under Sec. 53 of the Act, it emerges that the condition requiring pre-deposit of 25% of the adjudicated demand cannot be categorised as onerous and the submission, based on such allegation, that the remedy, because of such condition is inefficacious, and is illusory, cannot be sustained for more than one reason e.g. (a) the condition does not call for pre-deposit at notice stage/first-adjudication stage i.e. even before adjudication of the demand and without first offering opportunity to raise and submit objections against the demand; but (b) the provision comes into operation and becomes applicable after adjudication at first stage is over; (c) and after the liability to pay is crystallized upon conclusion of first stage adjudication in light of which obligation to pay accrues; and (d) the provision does not require that total adjudicated demand-amount should be deposited for maintaining proceedings under Sec. 53, but it requires pre-deposit of only 25% of adjudicated demand; (e) the provision, goes a step further and confers power on the authority to waive-reduce a part of the specified amount of pre-deposit i.e. to the extent of 50% of prescribed rate.

9. It is relevant and necessary to examine the aforesaid aspects but before that it is also pertinent to mention that the petitioner has overlooked an important aspect viz. the same provision i.e. Section 53 also empowers and allows the competent authority to partially waive or reduce the amount for pre-deposit.

9.1. In this context, it is relevant to note that Proviso of Sec. 53 provides, inter alia, that:

Provided further that wherein in any particular case the Chief Controlling Authority is of the opinion that the deposit of the amount by the applicant may cause undue hardship to him, the authority may in its discretion, either unconditionally or subject to such conditions as it may think fit to impose, dispense with a part of the amount deposited, so however, that the part of the amount so dispensed with shall not exceed fifty percent of the amount deposited or required to be deposited.

9.2. The competent authority under Sec. 53 of the Act has power and discretion to partially waive and reduce the amount of pre-deposit to the extent of 50% of the prescribed rate for pre-deposit, if the appellant-applicant can establish that

the compliance would cause undue hardships.

Thus, there is no room or scope to hold that the said provision and the remedy are onerous or illusory.

9.3. When the provision which imposes requirement of pre-deposit simultaneously allows discretion to the revisional-appellate authority to partially wave or reduce the condition, then, such statutory remedy cannot be branded as illusory or onerous and Court would not render statutory remedy redundant by readily or casually or light-heartedly allowing the aggrieved party (by the first authority's order) to short-circuit and bypass the statutory remedy.

10. There is another reason (i.e. the points at Sr. No. (a) and (b) of the foregoing Paragraph) which also does not permit the Court to accept such seemingly attractive, but actually self-serving contention.

10.1. It is pertinent that the said requirement becomes applicable not at the notice stage, but it becomes applicable post-adjudication i.e. at revisional or appellate stage after full-fledged adjudication at first stage is over. As a result of such first stage adjudication, the liability to pay is determined.

10.2. Once, liability is crystallized after adjudication, the obligation to pay accrues.

10.3. In background of such first stage adjudication and determination of liability if the Act provides further remedy by way of Appeal or Revision and if any condition is attached to such further remedy (i.e. if the appellate or revisional remedy provided by the Act is made conditional) whereby a requirement to deposit the adjudicated amount, or part of it, is prescribed, then, such provision cannot be termed onerous.

10.4. When the condition requiring pre-deposit of adjudicated demand, or part of it, is prescribed at appeal or revision stage, i.e. after the liability to pay is crystallized after conclusion of first stage adjudication, then, such provision and the remedy cannot be rendered redundant and reduced to nothing by treating the condition onerous.

10.5. Otherwise, it would tantamount to defeating Legislature's intention and statutory provision.

11. When the Legislature has, in its wisdom, prescribed condition requiring pre-deposit of part of adjudicated demand - amount, and that too after adjudication by the first adjudicating authority, then the provision cannot be treated as onerous, illusory or inefficacious and cannot be rendered futile or infructuous by permitting the aggrieved party to circumvent and bypass statutory remedy. Besides this, it is the duty and obligation of Court to give effect to all provisions of the Act, unless the provision itself is declared ultra vires.

11.1. When the liability to pay is already duly crystallized pursuant to adjudication at first stage, unless strong exception is made out, Court would not

exercise prerogative and discretionary jurisdiction and entertain a writ petition so as to render the statutory remedy otiose.

12. For the foregoing reasons, the provision and the remedy cannot be considered onerous or illusory or inefficacious.

The said view is fortified by the observation by the Hon''ble Apex Court in case of Smt. Har Devi Asnani Vs. State of Rajasthan and Others, , wherein the Hon''ble Apex Court considered the provisions under Sec. 65(1) of the Rajasthan Stamp Act, 1999. The proviso of Sec. 65(1) of the Rajasthan Stamp Act prescribe pre-condition of depositing 50% of the adjudicated demand for filing and maintaining application/appeal before the competent authority against the order of the first adjudicating authority. While considering the contention that the said condition renders the provision and the remedy illusory, the Hon''ble Apex Court while negating the said contention observed, after considering the decision in case of The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, (as well as other decisions) viz. Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, ; The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc., , in Para 10 of the said decision that:

10. We need not refer to all the decisions cited by the learned Counsel for the parties because we find that in Government of Andhra Pradesh v. P. Laxmi Devi (supra) this Court has examined a similar provision of Sec. 47A of the Stamp Act, 1899, introduced by the Indian Stamp Act (A.P. Amendment Act 8 of 1998). Sub-section (1) of Sec. 47A, introduced by Andhra Pradesh Act 8 of 1998 in the Stamp Act, is extracted hereinbelow:

47A. Instruments of conveyance, etc. how to be dealt with:-

(1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or Power of Attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon: Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned.

Under sub-sec. (1) of Sec. 47A quoted above, a reference can be made to the Collector for determination of the market value of property and the proper duty payable thereon where the registering officer has reason to believe that the market value of the property which is the subject-matter of the instrument has

not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties. The proviso of sub-sec. (1) of Sec. 47A, however, states that no such reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned. This proviso of sub-sec. (1) of Sec. 47A was challenged before the Andhra Pradesh High Court v. P. Laxmi Devi, and the Andhra Pradesh High Court held that this proviso was arbitrary and violative of Art. 14 of the Constitution and was unconstitutional. The Government of Andhra Pradesh, however, filed an appeal by special leave before this Court against the judgment of the Andhra Pradesh High Court and this Court held in Para 18 at page 735 of Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, that there was no violation of Arts. 14, 19 or any other provision of the Constitution by the enactment of Sec. 47A as amended by the Andhra Pradesh Amendment Act 8 of 1998 and that the amendment was only for plugging the loopholes and for quick realisation of the stamp duty and was within the power of the State Legislature vide Entry 63 of List-II read with Entry 44 of List-III of the Seventh Schedule to the Constitution. While coming to the aforesaid conclusions, this Court has relied on The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, ; Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, and Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad, (supra) in which this Court has taken a consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the grant made by the statute. Following this consistent view of this Court, we hold that the proviso to Sec. 65(1) of the Act, requiring deposit of 50% of the demand before a revision is entertained against the demand is only a condition for the grant of the right of revision and the proviso does not render the right of revision illusory and is within the legislative power of the State Legislature.

(Emphasis supplied)

Re.: Adjudicated demand & Accrued liability:

13. Once, an obligation to pay particular amount is determined after adjudication by a Court or a Tribunal or other statutory authority or a forum authorized by law to make such determination, then a liability and obligation to pay such amount accrues against, and falls on the person against whom such determination is made and order is passed.

13.1. Thereafter, such person comes under legal obligation to pay such amount and such person is then obliged to discharge the said liability by paying the deficient tax/duty duly determined by the authority after adjudication, unless a higher authority or forum sets aside or modifies the decision.

13.2. In present case, the amount demanded from the petitioner is a claim for payment of dues towards tax/duty which is determined by the first adjudicating

authority after adjudication pursuant to a show-cause notice, and that therefore, the liability to pay has accrued against the petitioner. Thus, unless and until a higher authority or forum does not set aside the decision, the petitioner is obliged to pay the entire adjudicated demand.

13.3. For such purpose, the Legislature may provide a forum and remedy to the party aggrieved by the first adjudicating authority's order by constituting an appellate or a revisional authority under the Act.

13.4. An appeal or a revision application are not matter of fundamental right but they are creature of statute. While creating and providing a forum and remedy against order or action of first adjudicating authority, Legislature may prescribe condition for invoking such remedy. The opportunity or right of Appeal or Revision can be circumscribed by condition which Legislature considers necessary and appropriate e.g. a special period of limitation (different from the provision under Limitation Act) or requirement of pre-deposit of the determined amount.

13.5. Merely because such condition is prescribed, the provision providing statutory remedy against first adjudicating authority's order does not become onerous and the remedy is not rendered illusory.

13.6. Actually, the difficulty and hardship are issues of facts which differ from case to case and depends on facts of each case. What may be hardship in one case or in one set of facts may not be in other case or other set of facts. Such aspects are required to be established with help of relevant facts, data and details.

14. Re: Hardships:

14.1. If the person aggrieved by the first adjudicating authority's order wants to challenge the order and the Act provides statutory remedy against the order of first adjudicating authority, but it also prescribes requirement for pre-deposit, then to seek waiver and/or to even claim that because of such condition the remedy is rendered inefficacious or illusory the aggrieved person must, atleast, establish, with aid of relevant details, data, facts and material, that in its/his case the condition would cause hardships.

14.2. Whether, in any particular case the prescribed requirement causes hardships will depend on facts of that case and will have to be established before the competent authority in each case, on strength of relevant facts, figures, details and data and there cannot be a generalisation that the provision which prescribes condition of pre-deposit for availing appellate/revisional remedy would be, per se, or has to be, inefficacious and onerous.

Actually, when such condition is prescribed after the liability to pay is determined and crystallized upon conclusion of adjudication at first stage then it cannot be treated or considered illusory or inefficacious or onerous and in a given case, so as to claim exception to the aforesaid general rule, the party aggrieved by the first adjudicating authority's order, must make out strong exception with help of

sufficient and convincing data, facts, details and material.

14.3. In present case, a trust being a non-agriculturist, has purchased agricultural land for such huge consideration i.e. Rs. 55.40 lacs (the market value of which, according to the first adjudicating authority, is about Rs. 4 crores) then in absence of any data, details or material, it cannot be readily and easily presumed that the prescribed requirement will result into or cause hardships, and that therefore, the provision should be treated onerous.

14.4. For that, the least that the petitioner must do is to plead and state the details, data and figures and facts and demonstrate that the condition would, in its case, for the stated reasons, cause hardship.

14.5. However, the petitioner has not cared to plead, much less establish its financial position to satisfy the Court that the condition prescribed under the Section would really and actually cause hardships to the petitioner. The petitioner has not placed any facts, figures, data, details, etc. about its financial position to satisfy the Court that the said remedy would cause hardships to the petitioner.

14.6. Actually on such premise, waiver/reduction in accordance with the proviso of Sec. 53 of the Act, could have been requested for.

14.7. Besides this, having regard to the amount in question (i.e. adjudicated amount) it cannot be termed exorbitant, particularly, in light of the amount paid by the petitioner for purchasing the parcel of land and in view of the findings of the first adjudicating authority, more so in light of the proviso to Sec. 53 which empowers the authority to reduce/partially waive the requirement.

14.8. The petitioner, however, did not take such course of action. And now, even without pleading and without placing on record any facts, figures, details, data, etc. about its financial position and without demonstrating as to how the condition/requirement prescribed under the Act would cause hardships, the petitioner is trying to contend that the provision under Sec. 53 is illusory.

14.9. The petitioner has not made out any case for hardship. Any relevant and necessary details, data and facts have not been pleaded and/or placed on record to establish a case for hardship.

15. For the aforesaid reasons and in view of the foregoing discussions, the petitioner's contention that Sec. 53 of the Act and the remedy and forum prescribed and constituted under Sec. 53 are onerous or illusory or inefficacious is not sustainable and cannot be accepted and entertained.

15.1. In present case, the petitioner wants to avoid and circumvent the remedy-forum prescribed and constituted by the Act. However, as mentioned above, the petitioner has not established, any facts and details to demonstrate and establish that the prescribed pre-condition would cause hardships to it if the remedy prescribed by the Act were to be availed.

16. As regards other aspects which the petitioner has raised against the decision

of the first adjudicating authority, the Court would not, at this stage offer any observation or remark about the said contentions lest it may affect, in any manner, the case of the contesting parties and/or the proceedings before the competent authority under Sec. 53 of the Act and/or the view and decision of the competent authority.

17. However, as observed by the Hon'ble Apex Court in the decision in case of Smt. Har Devi Asnani (supra), the Court ought to prima facie examine the facts and case of the petitioning litigant so as to find out whether the amount in question is unduly exorbitant before relegating it to statutory remedy. When the facts of petitioner's case are examined, it emerges from the record in present case that the condition of pre-deposit is to the extent of 25% of the adjudicated demand (which, in present case, is Rs. 16.86,170). Thus, in view of the specified rate for pre-deposit, the petitioner may be required to deposit only 25% of said Rs. 16,86,170/-, which, in the facts of this case, cannot be termed as unduly exorbitant.

17.1. Moreover, the competent authority has power to waive the said requirement to the extent of 50% of the prescribed requirement, and that therefore, there may be, subject to the order by the competent authority, further reduction as well.

17.2. The petitioners could have availed the said option of requesting the competent authority for partial waiver on the said condition.

17.3. Thus, having regard to the price paid by the petitioner for the land, the amount to be paid as pre-deposit cannot be, more particularly in view of the convenient silence maintained by the petitioner as regards its financial position, said to be exorbitant so as to allow the petitioner to circumvent statutory remedy.

17.4. Furthermore, in present case, as observed earlier, the petitioner has not made out even a single ground, by placing appropriate and relevant details, data and facts about its financial position, to demonstrate that the condition would cause hardships to the petitioners.

17.5. Besides this, so far as examination of the first adjudicating authority's decision about market value is concerned, the Court has refrained from making any observation since the proceedings before the authority under Sec. 53 be effected by any observations of this Court in the event the petitioners approach the said authority. However, to the limited extent this Court, as observed earlier, considered the said aspect of the matter and has noticed that on one hand Sec. 63 of the Bombay Tenancy & Agricultural Lands Act imposes restriction on sale of agricultural land to a non-agriculturist in view of which non-agriculturist cannot purchase an agricultural land without prior sanction from the competent authority. In present case, undisputedly, the petitioner is non-agriculturist and it has, admittedly, purchased agricultural land (which it could not have purchased, in view of prohibition under Sec. 63 of the Act). It is also noticed that agreement between the parties stipulate that the same is subject to Non-Agriculture Use

permission by the authority. Under the circumstances, when the sale came to be finalized and sale-deed came to be executed between the parties, the first adjudicating authority under the Act appears to have proceeded on the premise that requisite permission must have been granted which would convert/change the tenure of the land from agricultural to non-agricultural. Whether the decision by the competent authority is correct and justified or not and whether requisite permission under Sec. 63 of the Act was or has been granted or not; the effect of such permission or refusal as to the valuation of property in question are the issues of disputed facts which can be examined by the revisional/appellate authority on the basis of relevant evidence, including the evidence which would establish as to whether permission by the authority under the Act was granted or not. The aforesaid are only preliminary observations made by this Court so as to prima facie examine as to whether the first adjudicating authority has determined the market value at exorbitant rate which is wholly unsustainable or not. It, prima facie, appears, in light of the above mentioned aspects that the market value of the land in question would substantially and to great extent, stand changed if the tenure of the land in question is turned into, or considered as, non-agricultural land rather than agricultural land, and in the former case, it would be difficult, to hold, at this stage, that the determination of market value by the first adjudicating authority is arbitrarily or artificially and unduly exorbitant.

18. The contentions against the impugned order passed by the first adjudicating authority which are raised on behalf of the petitioners, including the contention that the provisions under Sec. 32(A)(ii) of the Act and/or under Rule 8 of the Stamp Valuation Rules are not complied and/or the order is passed without application of mind and/or that the impugned order has been passed before or without impounding the disputed documents and/or that the two resolutions were not supplied to the petitioner and/or that the quantification of the deficient stamp duty is about 9 times than the rate at which the petitioners paid the stamp duty or that the authority has erred in proceeding on the premise that the land in question is to be categorised as non-agricultural land, are such which can be raised before, and can be adjudicated on merits, by the competent authority under Sec. 53 of the Act. Furthermore, most of the said contentions are such which involve, or which are based on, issues of facts and/or are such which may require appreciation of evidence on record (documentary and oral).

18.1. Therefore also, the Court is of the view that the petitioner should approach, and deserves to be relegated to, the statutory remedy. The contentions on the strength of which the petitioners preferred present petition instead of approaching competent authority under Sec. 53 of the Act is, as observed hereinabove, not sustainable.

19. So as to support and justify the action of preferring the petition instead of approaching the competent authority under Sec. 53 and supporting the contention that the petition is maintainable, learned Advocate for the petitioner

submitted that the impugned order is without jurisdiction, and that therefore, a writ petition is maintainable and deserves to be entertained and instead of relegating the litigant to statutory remedy, the Court may entertain present petition.

19.1. On this count, it is necessary to note, at this stage, that there is a world of difference between authority inherently lacking jurisdiction and irregular exercise of jurisdiction conferred by law. Mere irregularity in exercising jurisdiction conferred by law, does not warrant or does not justify, as a matter of course and/or as a matter of right, in all cases, invocation of discretionary writ jurisdiction, more particularly when statutory remedy is constituted and provided by the Act.

19.2. The reliance placed on the decision in case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , is not justified in present case. The provision under Sec. 53 of the Act confers control and power over all orders/actions by authority in exercise of power under Chapter III, Chapter IV and Chapter V (except Sec. 32A) and also under clause (a) of first proviso of Sec. 27.

In present case, it is not shown that the impugned order is passed by authority inherently lacking jurisdiction, although submissions have been urged to contend that the order suffers from vice of irregular exercise of jurisdiction e.g. order is allegedly passed without impounding document and that procedure under Rule 8 is allegedly not followed.

19.3. In all cases of alleged error of facts or alleged error of law or alleged irregularity in exercise of jurisdiction conferred on the authority by law, the writ Court will not exercise prerogative and discretionary jurisdiction to rectify alleged errors of fact or law or irregularity in exercise of jurisdiction. In the decision in case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, . the Hon'ble Apex Court has observed that:

7. The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. In this case, there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision.

19.4. There are 3 (three) well-recognized exceptions to the general restriction accepted by a writ Court in the matter of exercising prerogative and discretionary writ jurisdiction. If the Court finds that, (a) petitioner seeks enforcement of fundamental right; or (b) the impugned action or order is, ex-facie in violation of

principles of natural justice; or (c) it is noticed that the action or the order or the proceedings suffer from inherent lack of jurisdiction, then, despite alternative and efficacious remedy available, the Court may, if the facts of the case justify, exercise the discretion and entertain a writ petition.

19.5. In present case, the petition is not filed for enforcement of fundamental right and upon examination of facts and the events as well as the impugned order, it is also noticed that the proceedings or the order are not vitiated by violation of principles of natural justice. So far as the third exception is concerned, it is noticed on examination of relevant provisions vis-a-vis the petitioner's contentions that the purpose of the petitioner's objections is that the first adjudicating authority has exercised jurisdiction conferred by law, arbitrarily and with material irregularity and has not considered relevant aspects. It is not the case that the impugned order is passed by the authority who inherently lacked jurisdiction. It is not shown that the authority acted "wholly without jurisdiction". Consequently, it cannot be said that the order is passed by or proceedings are conducted by authority who acted wholly without jurisdiction i.e. despite inherently lacking jurisdiction. In the decision in case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , the Hon"ble Apex Court reached the conclusion that the "Registrar" and consequently the proceedings and the order, inherently lacked jurisdiction. The petitioner cannot derive benefit from said decision so as to maintain present petition.

19.6. So as to wriggle out of this position, learned Advocate for the petitioner would contend that the statutory remedy is onerous. The forgoing discussion demonstrates and clarifies that the said submissions is also devoid of merits and it is not possible to hold that the said provision and remedy is onerous or not efficacious and is illusory.

19.7. Consequently, present petition does not measure upto or pass the test of either of the aforesaid three exceptions. For this reasons also, the petition does not deserve to be entertained and the Court is not inclined to entertain the petition.

Re.: Limitation:

20. The petitioners would then catch hold of the last straw and contend that the period of limitation to approach the authority under Sec. 53 has expired.

20.1. A petitioning litigant cannot be allowed to take advantage or disadvantage of its own acts or negligence or conscious action of not taking steps for approaching the competent statutory authority constituted under a statute within prescribed time-limit. In present case, after having not taken any steps against the impugned order within prescribed time-limit, the petitioner claims that it may be allowed to maintain the petition as time-limit prescribed under Sec. 53 of the Act has expired. Therefore, the request does not deserve to be entertained more particularly because any explanation for delay caused in initiating proceeding against the order in prescribed time-limit of 90 days is not offered and any

request for condoning delay so as to enable the petitioner to approach the statutory authority is also not made.

20.2. In present case, it is noticed that the impugned order came to be passed on 1-3-2012. The provision under Sec. 53 of the Act prescribes that person aggrieved by the order passed by the first adjudicating authority should submit application/appeal under Sec. 53 within 90 days from the date of order. Whereas, in present case, not only the petitioners did not take any steps so as to approach the competent authority within prescribed time-limit, but also did not file present petition within the said prescribed time-limit of 90 days.

20.3. The memo of the petition appears to have been supported by affidavit on 27-7-2012 and appears to have been presented for registration in the office on 30-7-2012. Thus, the memo of petition was affirmed and presented in the registry after expiry of 90 days.

20.4. The said details, prima facie, demonstrate that the petitioner consciously did not take any steps to approach the competent authority within prescribed time-limit and also allowed the time-limit to expire and then filed present petition so that it can raise the contention that now the time-limit has expired.

20.5. Under the circumstances, in absence of any explanation about cause for delay and in absence of any request to condone delay or in absence of some similar request, it does not appear justified or equitable to allow the petitioners to take advantage or disadvantage of their own conscious decision and action.

20.6. The petitioner has, in the petition or even at the time of hearing, not made request that in exercise of discretionary and equitable jurisdiction, the Court may condone delay and direct the authority to decide the case on merits.

20.7. This aspect, which emerges from the record of the case and from the actions of the petitioner, prima facie, demonstrates that the petitioner had consciously taken the decision and action of not taking recourse under Sec. 53 of the Act within prescribed time-limit and the petitioner never intended to approach the authority under Sec. 53 of the Act.

20.8. This aspect becomes clear from the fact (rather conduct of the petitioner) that petitioner has not made request in the relief clause that the delay may be condoned by the Court and even during hearing of the petition also, the petitioner never expressed readiness to approach the alternative forum and has not offered explanation as regards the passage of time which resulted into expiry of prescribed time-limit.

20.9. Under the circumstances, it does not appear appropriate to allow the petitioners to take benefit of their own decision and action (i.e. allowing time-limit to expire), and that therefore, the petitioners' submission that the writ petition may be entertained because time-limit has expired cannot be accepted or entertained.

20.10. The Court would hasten to add that it would still be open to the petitioner to take out appropriate proceedings requesting that the delay may be condoned provided the petitioner offers satisfactory explanation and makes out sufficient cause to justify such request.

21. Now, so far as the decisions relied on by learned Advocate for the petitioner are concerned, the petitioners have relied on the decision of the Division Bench in case of Diwan Kalusha Ahmedsha and Others Vs. Mr. Vanikar, Collector of Kaira, wherein the Court was examining order passed under Sec. 39(1)(b) of the Act. In the said case, the Court noticed that before making the impugned order, the Collector had failed to give opportunity to the petitioner to represent their case and he did not pass speaking order. In present case, it cannot be said that the petitioners were not granted opportunity to represent their case and so far as alleged defects in the order is concerned, the said contentions are such, which can be raised before, and examined by, the competent authority. The cited decision does not lay down a straight-jacket formula that in all cases where the order is not speaking order, the aggrieved party should not be relegated to the statutory alternative remedy or that invariably a writ petition must be entertained. So to say, on perusal of the said decision, it does not come out that the maintainability of the petition was opposed or the issue of statutory alternative remedy was considered and rejected by the Court in the said decision.

The next decision on which the petitioner relied is the case between Gondal Vibhag Nagrik Sahakari Bank Ltd., Gondal v. The Collector, 1987 GLT 161: 1987 (2) GLH (UJ) 11. In the said decision, the Court has observed that though any specific provision is not made in the case for providing opportunity of being heard, minimum principles of natural justice are required to be followed. The decision in case of Himanshu S. Nanavati Vs. Ahmedabad Municipal Corporation, and the decision in case of State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others, reiterates the applicability of principles of natural justice. In present case, it is noticed earlier that sufficient opportunity of hearing and defence was allowed to the petitioner. Therefore, in view of the facts of present case, the said decisions are not applicable in facts of present case.

The next decision on which learned Advocate for the petitioner relied on is the decision in the case between Janardan Jaishankar Jokharkar and Another Vs. State of Gujarat and Others, wherein the Court observed that the adjudicating authority cannot consider and proceed on the grounds which are not alleged in the show-cause notice. In the said case, the order passed by the first adjudicating authority was challenged by the petitioner before the statutory authority/appellate authority i.e. Secretary (Appeals) Revenue Department, and thereafter, the petitioner had preferred the writ petition. Therefore, the said decision does not assist the petitioner in supporting its contention. So far as the contention that the authority cannot travel beyond the grounds alleged in the show-cause notice is concerned, the said contention can be raised before the competent authority under Sec. 53 [just as in the cited decision the petitioner

had approached the Court after approaching Secretary (Appeals), Revenue Department i.e. the Revisional/Appellate Authority] who can examine the matter on such ground and upon being satisfied can pass appropriate order as the facts may require.

The other decision on which the petitioners have relied is the case between Smt. Har Devi Asnani Vs. State of Rajasthan and Others, wherein the Hon''ble Apex Court has observed that the High Court was not justified in not entertaining the petition on the ground of alternative remedy. The Hon''ble Apex Court has observed, in the cited decision, that the High Court did not consider whether determination of market value and the demand of deficient stamp duty were unduly exorbitant so as to make the revision application/appeal requiring deposit of 50% of the demand ineffective.

In this view of the matter, in the facts of present case, the said decision by the Hon''ble Apex Court would not assist the petitioners in carrying their case any farther.

The learned Counsel for the petitioner also relied on the decision in case of Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another, wherein the respondents'' submission that the petitioner should have approached the Appellate Assistant Commissioner, was not accepted by the Hon''ble Apex Court since Commissioner of Sales Tax being superior officer, [i.e. authority higher than the Appellate Assistant Commissioner under Sec. 42B(2)], which had already passed an order under Sec. 42B(2) was binding to the said Appellate Assistant Commissioner. In present case, similar situation does not exist inasmuch as any order by officer superior to the competent authority under Sec. 53 of the Act which would be binding to the authority under Sec. 53 of the Act is not passed in present case. Therefore, in view of the facts of present case, the said decision does not assist the petitioner in carrying the case farther.

The learned Counsel for the petitioner has relied on the decision by the Hon''ble Apex Court in case of M.G. Abrol Vs. Shantilal Chhotlal and Co., . In the said decision, considering the facts and circumstances of the case, the High Court had entertained the petition, and therefore, the Hon''ble Apex Court observed that since High Court thought it fit to exercise jurisdiction under Art. 226, the Hon''ble Apex Court did not find unexceptional circumstances to interfere with High Court''s discretion. The said decision does not lay down inflexible direction and ratio that in all cases where person aggrieved by the decision of first adjudicating authority files writ petition, then, petition should be entertained and person should not be relegated to alternative remedy. Therefore, the said decision does not assist the petitioner in facts of present case.

Reliance is also placed on the decision by the Hon''ble Apex Court in case of Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, . In the facts of present case, the said decision also does not assist the petitioner inasmuch as, in the said case, the petitioner did file appeal before the Collector of Customs

and Excise, and thereafter, made representation requesting that it may not be required to deposit the duty demanded, pending the appeal. In present case, the petitioner has not adopted such course of action though it is available and actually the statute so mandates. Like in the cited case, in present case also, the petitioner could have made such request to the competent authority in light of proviso under Sec. 53, but the petitioner not only did not follow the said course of action but consciously allowed time of 90 days to pass by, and thereafter, prefer present petition. In facts of present case, the decision does not provide any aid to the petitioner.

So far as the Hon''ble Apex Court's decision in case of J.M. Baxi and Co. Vs. Commissioner of Customs and Another, is concerned, the said decision also does not assist the petitioner in asserting that it need not approach the competent authority under Sec. 53 of the Act, i.e. statutory remedy, and cannot maintain writ petition. Actually, the Hon''ble Apex Court has observed in the said decision that normally, the High Court should not interfere in exercise of prerogative writ jurisdiction when statutory remedy is available. The aspect of limitation and about the amount (quantum of demand) in question are discussed earlier. In present case, the petitioner has not brought out any exceptional and compelling circumstances to justify its assertion to maintain writ petition and to not approach the statutory remedy.

Thus, in the facts of present case, the decisions on which reliance is placed by the petitioner does not assist the petitioner in supporting the contentions raised for maintaining the petition and not approaching the statutory remedy against the order under challenge in present petition.

22. So far as petitioners'' submission that the writ petition should be entertained and petitioners should not be relegated to the alternative remedy is concerned, it is appropriate to refer to the decision in case of C.C.T. Orissa and Others Vs. Indian Explosives Ltd., wherein the Hon''ble Apex Court observed that:

3....The High Court was of the view that the writ petition can be entertained even though an alternative remedy is available. Accepting the stand of the assessee, the High Court held that the notice issued was to be quashed, and accordingly, quashed the impugned notice dated 14-1-2004.

4. Learned Counsel for the appellant submitted that the High Court ought not to have entertained the writ petition more particularly when for the assessment year 1997-1998 and 1998-1999 another Division Bench in Writ Petition Nos. OJC Nos. 16928 of 1998 and 1500 of 2000 had rejected the stand of the assessee. Though, it was brought to the notice of the High Court that such is the position, unfortunately the High Court did not even refer to the said decision.

8. The High Court seems to have completely lost sight of the parameters highlighted by this Court in a large number of cases relating to exhaustion of alternative remedy...

In case between Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, , the Hon''ble Apex Court considered similar provisions under Sec. 129E of the Customs Act, 1962 and observed, inter alia, that:

5. The aforesaid Section provides a conditional right of appeal in respect of an appeal against the duty demanded or penalty levied. Although, the Section does not expressly provide for rejection of the appeal for non-deposit of duty or penalty, yet it makes it obligatory on the appellant to deposit the duty or penalty, pending the appeal, failing which the Appellate Tribunal is fully competent to reject the appeal. See, in this connection, the observations of this Court in respect of Sec. 129 prior to substitution of Chapter XV by the Finance Act, 1980 in Navinchandra Chotelal Vs. Central Board of Excise and Customs and Others, . The proviso, however, gives power to the appellate Authority to dispense with such deposit unconditionally or subject to such conditions in cases of undue hardships. It is a matter of judicial discretion of the appellate Authority.

13. It is not the law that adjudication by itself following the rules of natural justice would be violative of any right - constitutional or statutory, without any right of appeal, as such. If the statute gives a right to appeal upon certain conditions, it is upon fulfilment of those conditions that the right becomes vested and exercisable to the appellant. The proviso to Sec. 129E of the Act gives a discretion to the Tribunal in cases of undue hardships to condone the obligation to deposit or to reduce. It is a discretion vested in an obligation to act judicially and properly.

In the case between Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, , the Hon''ble Apex Court considered the provision making available statutory remedy by constituting appellate authority and in that context, the Hon''ble Apex Court observed that:

45. If the provision is interpreted in the manner above suggested, one can steer clear of all problems of constitutional validity. The contention on behalf of the Corporation to read the provision rigidly and seek to soften the rigour by reference to the availability of a recourse to the High Courts by way of a petition under Arts. 226 and 227 in certain situations and the departmental instructions referred to earlier does not appear to be a satisfactory solution. The departmental instructions may not always be followed and the resort to Arts. 226 and 227 should be discouraged when there is an alternative remedy. A more satisfactory solution is available on the terms of the statute itself. The construction of the Section approved by us above vests in the appellate authority a power to deal with the appeal otherwise than by way of final disposal even if the disputed tax is not paid. It enables the authority to exercise a judicial discretion to allow the payment of the disputed tax even after the appeal is filed, but no doubt, before the appeal is taken up for actual hearing. The interpretation will greatly ameliorate the genuine grievances of, and hardships faced by, the assessee in the payment of the tax as determined. Though, an assessee may not be able to acquire an absolute stay of the recovery of the tax until the dispute is

resolved, he will certainly be able to get breathing time to pay up the same where his case deserves it. If this interpretation is placed on the provision, no question of unconstitutionality can at all arise.

In this context, reference may also be made to the decision in case of *State of Madhya Pradesh Vs. Nerbudda Valley Refrigerated Products Company Pvt. Ltd. and Others*, wherein the Hon'ble Apex Court has, in Paras 12 and 13, observed that:

12. A perusal of the order of the Nazul Officer shows that grant of N.O.C. depends upon various factors and fulfilment of certain conditions. It is also not in dispute that the said officer is better equipped with to decide the application for grant of N.O.C. Undoubtedly, while deciding such an application, Nazul Officer has to consider not only the circulars but also rules and regulations framed by the State Government. Even otherwise, when the ultimate order of Nazul Officer can be canvassed before Collector, the High Court ought not to have exercised its extraordinary jurisdiction under Art. 226 as an appellate Court over the finding of fact arrived at by the Nazul Officer. In this context, it is useful to refer the following decisions

In *Punjab National Bank Vs. O.C. Krishnan and Others*, , this Court held:

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the Banks and the financial institutions. There is a hierarchy of appeal provided in the Act. namely, filing of an appeal under Sec. 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Arts. 226 and 227 of the Constitution or by filing a Civil Suit, which is expressly barred. Even though, a provision under an Act cannot expressly oust the jurisdiction of the Court under Arts. 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Art. 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

(Emphasis supplied)

In *State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another*, , this Court observed as under:

17. We shall first deal with the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Art. 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Art. 226 of the Constitution. At

the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally, the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

13. There is broad separation of powers under the Constitution between three organs of the State, i.e., the Legislature, the Executive and the Judiciary. It is also well established principle that one organ of the State should not ordinarily encroach into the domain of another. Even if the order of the first authority, in the case on hand, Nazul Officer, requires interference, it is for the appellate authority to look into it and take a decision one way or the other, and it is not an extraordinary case which warrants direct interference by the High Court under Art. 226. It is relevant to note that the Nazul Officer has adverted to a relevant fact that the Government, while renewing the lease of 3.13 acres of land from 14-3-1999 to 13-3-2029 in favour of the respondent-Company, permitted it to change the use of leased land from industrial purpose to commercial or residential purpose on payment of the lease rent, as payable on the land used or changed for commercial or residential purpose. In such circumstances, if the said direction is applicable, it is but proper on the part of the respondent to comply with it. Even if the stand of the respondent-Company is acceptable and if they are aggrieved of the order of the Nazul Officer, they are free to challenge the same before the Collector as pointed above. In our opinion, interference by the High Court against the order of the original authority, which is based on factual details, is not warranted under writ jurisdiction.

In the decision in case of *United Bank of India Vs. Satyawati Tondon and Others*, , the Hon"ble Apex Court considered the issue related to statutory remedy and wisdom in or justification for entertaining writ petition under Art. 226 of the Constitution of India where the petitioning litigant has, despite statutory remedy being available, not approached the statutory remedy and instead preferred writ petition. The Hon"ble Apex Court observed in the said decision that:

19. In *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, , the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Art. 226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under:

The jurisdiction of the High Court under Art. 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 Art. 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 Art. 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 Art. 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.

20. In *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, . a three-Judge Bench considered the question whether a petition under Art. 226 of the Constitution should be entertained in a matter involving challenge to the order of the assessment passed by the competent authority under the Central Sales Tax Act, 1956 and corresponding law enacted by the State Legislature and answered the same in negative by making the following observations:

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 sub-sec. (1) of Sec. 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 sub-sec. (3) of Sec. 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 Sec. 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 Art. 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*, 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.* and has been re-affirmed by the Privy Council in *Attorney-General of Trinidad and Tobago v. Gordon Grant Co. Ltd.* and *Secretary of State v. Mask & Amp. Co.* 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.

25. In *Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another*, , the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Art. 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed:

31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case, the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-bye by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has, however, dismissed the writ petition on the ground of lack of territorial jurisdiction.

32. No reason could be assigned by the appellant's Counsel to demonstrate why the appellate jurisdiction of the High Court under Sec. 35 of F.E.M.A. does not provide an efficacious remedy. In fact, there could hardly be any reason since the High Court itself is the appellate forum.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the D.R.T. Act and S.A.R.F.A.E.S.I. Act and exercise jurisdiction under Art. 226 for passing orders which have serious adverse impact on the right of Banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

(Emphasis supplied)

23. It emerges from the judicial pronouncements and precedents that when statutory remedy is available the writ Court would relegate the petitioning litigant to the statutory remedy. The writ Court would exercise strict control and highest degree of restraint and would decline to entertain petition when statutory remedy is available.

For the foregoing discussion and reasons, I am not inclined to exercise discretion so as to entertain the petition when statutory alternative remedy is available to the petitioners. In the facts and circumstances of the case, it has clearly

emerged that against the order of first adjudicating authority (which is impugned in present petition) statutory remedy is available and that the said remedy or provision are not onerous or inefficacious or illusory and that there is no basis or justification to bypass or short-circuit the statutory remedy. The petitioner has failed to make out any strong exception to entertain the petition. Any case to entertain the petition instead of requiring the petitioner to approach statutory authority is not made out and petitioner deserves to be relegated to statutory remedy.

The petition is accordingly not accepted and it stands disposed of. No costs.