



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 6719 OF 2012

RIKHAB CHAND JAIN

APPELLANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

J U D G M E N T

1. This civil appeal, by special leave granted on 17th September, 2012, impugns the judgment and order dated 14th March, 2011¹ of the High Court of Judicature for Rajasthan, Bench at Jaipur², whereby the appellant's writ petition³ came to be dismissed on the ground of omission of the appellant to pursue the alternative remedy of appeal provided by the Customs Act, 1962⁴ as well as on merits.
2. The facts leading to presentation of the writ petition before the High Court are not in dispute. On 27th September, 1992, alleged smuggled silver weighing 252.177 kgs came to be seized. By an order dated 7th May, 1996, the respondent no. 3⁵ ordered confiscation of the seized silver and levied penalty of Rs.50,000/- on the appellant. The said order was

¹ impugned order

² High Court

³ D.B. Civil Writ Petition No. 6203 of 2009

⁴ 1962 Act

⁵ Commissioner, Customs and Central Excise

carried in appeal⁶ by the appellant before the CEGAT⁷ under Section 129A(1) of the 1962 Act. The CEGAT effectively dismissed the appeal by an order dated 23rd June, 2000. While it did not interfere with the order of confiscation, the amount of penalty was reduced to Rs.30,000/-.

3. Despite availability of a further appeal to the High Court under Section 130 of the Customs Act, the order dated 23rd June, 2000 of dismissal of the appeal by the CEGAT was not challenged by the appellant within the prescribed period of limitation, i.e., 180 days. Instead, the appellant approached the High Court in its writ jurisdiction as late as on 18th March, 2003. Therein, he laid a challenge to the order dated 7th May, 1996 of the respondent no.3 and the order dated 23rd June, 2000 of the CEGAT.
4. Perusal of the impugned order reveals that the High Court did not examine the order of confiscation on its merits forming a view that such an order had not been challenged by the appellant before the CEGAT. The High Court held that since the appellant did not challenge the confiscation order before the CEGAT (but only challenged the order of penalty), the order of the CEGAT had attained finality. Therefore, the only remedy available to the appellant was to file an appeal under Section 130A of the Act, which he did not pursue. Thus, the High Court declined to invoke its writ jurisdiction under Article 226 of the Constitution. One other reason was assigned by the High Court for holding that the appellant did not deserve relief. The High Court noted that the order dated 14th May, 2003 of the criminal revisional court (the court of the Additional Sessions

⁶ Appeal No. C/225/96 NB

⁷ Customs, Excise and Gold (Control) Appellate Tribunal

Judge), which set aside the Special Magistrate's direction contained in an order dated 12th February, 2002 to return the seized silver, was never challenged by the appellant. In effect, when there was no order directing return of silver, the appellant could not have asked for the relief in a writ petition.

5. We have heard Ms. Chitragda Rastravara, learned counsel for the appellant and Mr. Raghavendra P. Shankar, learned Additional Solicitor General for the respondents at some length.
6. Since the appellant has been told off at the gates by the High Court on the ground that he did not pursue the alternative remedy of appeal before the High Court under Section 130 of the 1962 Act, what is central to our consideration is whether the High Court was justified in refusing to entertain the writ petition of the appellant seeking a writ of certiorari.
7. Decisions of this Court are legion from which guidance can aptly be drawn as to when a writ petition ought to be entertained despite the party approaching the high court not exhausting the alternative statutory remedy available to him/her/it. Insistence by the courts – both this Court and the high courts – of exhaustion of a statutory remedy provided by an enactment before invoking the writ jurisdiction of a high court under Article 226 of the Constitution can be traced to one of several self-imposed restrictions, laid down by judicial precedents of this Court. Unless, of course, any of the exceptions [challenge to an act/order grounded on (i) breach of a Fundamental Right; (ii) violation of natural justice principles; (iii) lack of jurisdiction; and (iv) unconstitutionality of a statute] is satisfied, that a writ court may refuse to entertain a writ

petition does not admit of any doubt. This Court relying on a host of decisions including ***State of Uttar Pradesh v. Md. Nooh***⁸ and ***Titaghur Paper Mills v. State of Orissa***⁹ has, in ***Godrej Sarah Lee v. Excise and Taxation Officer-cum-Assessing Authority***¹⁰, reiterated that availability of an alternative statutory remedy does not oust the jurisdiction of a writ court. It was also explained how “entertainability of a writ petition” is a concept distinct from the concept of “maintainability of a writ petition”.

8. However, this particular appeal unfolds a fact situation which requires consideration of the issue from a different perspective. We wish to justify our conclusions by referring to two old-era Constitution Bench decisions of high authority, which have seemingly faded into obscurity but the significance and impact whereof have continued relevance even in present times.
9. While deciding whether to entertain a petition under Article 226 bearing in mind the precedents in the field, a writ court ought to additionally notice the forum designated by the statute for the litigant to approach. This is necessary because the alternative forum that is provided by the statute has to be one which can dispense speedy and efficacious relief. However, as in the present case, if the statutorily designated alternative forum happens to be the high court itself whose jurisdiction under Article 226 is invoked and not any ordinary statutory functionary/tribunal, refusal to entertain the petition should be the rule and entertaining it an

⁸ AIR 1958 SC 86

⁹ (1983) 2 SCC 433

¹⁰ 2023 SCC OnLine SC 95

exception.

10. We may profitably refer, in this context, to the Constitution Bench decision in ***Thansingh Nathmal v. A. Mazid, Superintendent of Taxes***¹¹. In ***Thansingh Nathmal*** (supra), this Court had the occasion to lay down a principle of law which is salutary and not to be found in any other previous decision rendered by it. The principle, plainly, is that, if a remedy is available to a party before the high court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would allow the machinery set up by the concerned statute to be by-passed. The relevant passage from the decision reads as follows:

"The jurisdiction of the High Court under article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the article. 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 to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under article 226, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."

(emphasis ours)

¹¹ AIR 1964 SC 1419

11. Since the appellant had a remedy by way of a reference before the High Court against the order dated 23rd June, 2000 of the CEGAT, we do not consider refusal to exercise discretion in favour of the appellant to be so fundamentally incorrect that interference is warranted.
12. That apart, the majority view in a previous Constitution Bench in **A. V Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani**¹² reads thus:

“14. ..., we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Article 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the judgment of the learned C.J. in *Mohammed Nooh case* with its reference to the right to appeal being lost ‘through no fault of his own’ emphasizes this aspect of the Rule.”

(emphasis ours)

In essence, this Court was of the opinion that once a petitioner has due to his own fault disabled himself from availing a statutory remedy, the discretionary remedy under Article 226 may not be available.

13. Although there is no period of limitation for invoking the writ jurisdiction of a High Court under Article 226, all that the courts insist is invocation of its jurisdiction with utmost expedition and, at any rate, within a “reasonable period”. What would constitute “reasonable period” cannot be put in a straight-jacket, and it must invariably depend on the facts and circumstances of each particular case. Nonetheless, the period of limitation prescribed by an enactment for availing the alternative remedy

¹² AIR 1961 SC 1506

provided thereunder in certain cases does provide indication as to what should be the "reasonable period" within which the writ jurisdiction has to be invoked.

14. In the present case, the order of the CEGAT was subjected to challenge by the appellant well after the prescribed period of limitation for seeking a reference by making an application under Section 130A of the 1962 Act (as it then existed). Although, an explanation was sought to be given by the appellant why the writ jurisdiction could not be invoked earlier, we are not impressed. The belated invocation of the writ jurisdiction of the High Court could not have been justified by the appellant by taking the plea of pursuing remedy elsewhere. Even otherwise, such an explanation could well have been offered in an application seeking condonation of delay in presentation of the application under Section 130A of the 1962 Act before the High Court. We have not found any provision in the 1962 Act which either expressly or by necessary implication excluded the provisions of Sections 4 to 24 of the Limitation Act, 1963¹³. As such, in terms of Section 29(2) of the 1963 Act, the High Court in its reference jurisdiction could have well been approached with a request to condone the delay in presentation of the application under Section 130A of the 1962 Act.
15. In our considered opinion, the appellant having had a remedy before the High Court in a separate jurisdiction which was equally efficacious, he indulged in the (mis)adventure of invoking its writ jurisdiction which was rightly not entertained.

¹³ 1963 Act

16. We have also noticed that the High Court dismissed the writ petition as one being devoid of merits. It was noted by the High Court that the CEGAT reduced the quantum of penalty, while observing that the confiscation was not under challenge before it. Ms. Rastravara invites our attention to the memo of appeal that came to be filed before the CEGAT against the order of confiscation dated 7th May, 1996 to buttress her contention that the order of confiscation was also under challenge. She is right; the confiscation order indeed was under challenge in the appeal before the CEGAT. However, we do not find appropriate pleadings in the writ petition to the effect that the point of invalidity in confiscating the seized silver was duly raised before the CEGAT but had not been considered by it. Merely urging a ground, under the heading 'GROUNDS', which is in the nature of a submission before the High Court without anyone (having full knowledge of the proceedings before the CEGAT and knowing precisely the points raised) taking responsibility of making a statement on oath by verifying it as true to his knowledge that a point was raised but not dealt with, would not be sufficient to persuade us to entertain any grievance on this score. Drawing from our judicial experience, we may observe that not all points raised or grounds urged in a petition are advanced in course of hearing. In order to have the court examine the objection of non-consideration raised as well as to succeed, there has to be a direct challenge that the authority whose order is being questioned did not deal with the point/ground much to the detriment of the party raising it. The writ petition lacked the basic pleadings and hence, the High Court did not fall in error in dismissing it even on merits.

17. We, therefore, uphold the impugned order of the High Court and dismiss the appeal.

.....J.
[DIPANKAR DATTA]

.....J.
[ARAVIND KUMAR]

**New Delhi;
November 12, 2025.**