

Entertaining a writ petition in the presence of an appellate remedy is not preferable - Madras HC

23 June 2021



Summary

The Madras High Court (HC) held that a writ petition cannot be entertained in a routine manner without exhausting the alternate remedies available under the statute. It further stated that in normal (other than exceptional) circumstances, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the appellate authority. The appellate authorities are competent to grant even the interim orders and consider the appeal on merits by affording opportunity to all the parties.

Facts of the case

- The petitioner¹ filed writ petition² challenging the Order-in-Original passed by the Deputy Commissioner of Customs.
- The petitioner contended that no show cause notice was issued, and the principles of natural justice have been violated.
- The impugned order has been passed based on the unilateral decision taken by the authorities and thus, preferring an appeal may not be necessary.
- **Statutory appellate remedy is a valuable right:** The statutory appellate remedy provided under the law is a valuable right conferred on a litigant. Thus, such a right cannot be dispensed with in a routine manner, even by the High Court⁴.
- **Appeal remedy to be exhausted:** The appellate remedy contemplated under the statute cannot be dispensed with in a routine manner in a writ proceeding. In all such cases, the appeal remedy is to be exhausted by the aggrieved person by following the procedures as contemplated⁵.

Madras HC ruling and observations³

¹ M/s Vishnu Clothing Company

² WP No.12489 of 2021 and WMP Nos.13265 & 13266 of 2021

³ Order dated 9 June 2021

⁴ Under Article 226 of the Constitution of India

⁵ Either under Section 128 or Section 129 of the Customs Act, 1962

- **Petitioners are at liberty to approach the Appellate Authority:** The petitioners are at liberty to approach the appellate authority and file an appeal within a period of 60 days and in the event of filing of appeal(s) by the writ petitioners all such appeals are directed to be entertained without reference to the period of limitation.
- **Writ dismissed:** Therefore, the HC held that entertaining a writ petition in the presence of an appellate remedy is not preferable and dismissed the writ filed by the petitioner.

Our comments

The Madras HC in another case⁶ had observed that to avoid the pre-deposit, the practice of filing writ petitions is prevailing in the High Court. However, the High Court cannot encourage such practice and the appellate remedy contemplated under the law is to be exhausted in all circumstances.

In a similar case,⁷ the HC had held that if the intention of the legislature is to prescribe an appellate remedy, then such right can neither be denied nor be dispensed with by the High Court⁸. In another case,⁹ the HC held that when the issues raised in the writ petition are not purely questions of law, such questions cannot be decided by a Writ Court and the appellant should avail the alternate remedy available under the law.

Considering the above, it is imperative that due caution is exercised by the businesses before approaching the writ courts to avoid unnecessary litigation and consequent delay in attaining finality on the matter.

⁶ M/s Sri Sathya Jewellery

⁷ M/s Fuso Glass India Pvt. Ltd.

⁸ By exercising powers under Article 226 of the Constitution of India

⁹ M/s Fourcess Diamond Pvt. Ltd.

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