

EY Tax Alert

HC restricts scope of writ jurisdiction against order passed by AAAR

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

This Tax Alert summarizes a recent ruling¹ of the Bombay High Court (HC) on the admissibility of writ petition against the order of the Appellate Authority for Advance Ruling (AAAR).

The key observations of the HC are:

- ▶ The legislative scheme indicates that the provisions relating to advance ruling are distinct from the appeal and revision. The order of the AAAR is binding on the applicant and the concerned jurisdictional officer. No further appeal is provided. This legislative scheme has to be kept in mind when the applicant challenges the order passed by the AAAR invoking writ jurisdiction.
- ▶ In the present case, the AAAR followed the entire procedure, and full opportunity was given to the assessee. There is no ground raised of breach of principles of natural justice on account of not giving an opportunity of being heard.
- ▶ The view taken by AAAR is based on the material placed before it. The assessee's intention to convert this limited enquiry into an appellate enquiry is not permissible to be undertaken in the writ jurisdiction.
- ▶ The Authorities have dealt with the issue in extenso, having considered the submissions and the law cited. The view taken in the matter cannot be considered as suffering from fundamental error or absurd or perverse.

Accordingly, HC dismissed the writ petition filed by the assessee, challenging the order passed by the AAAR.

¹ TS-672-HC(BOM)-2022-GST

Background

- ▶ Assessee is a supplier and manufacturer of paints and powder coatings. One of the major outward supplies of the assessee is marine paints which are used on vessels as anti-fouling paints.
- ▶ Assessee applied for an advance ruling on whether the marine paints supplied by it should be considered as a part of the ship/vessel (taxable @5%) or should be classified as paints (taxable @18%).
- ▶ Both, the Maharashtra Authority for Advance Ruling (AAR) and Appellate Authority for Advance Ruling (AAAR) rejected the contentions of the assessee and held that the concerned marine paints cannot be classified as part of the ship.
- ▶ Aggrieved, assessee filed a writ petition before the Bombay High Court (HC).

Assessee's contentions

- ▶ There is a fundamental error committed by both the Authorities in holding that the marine paint manufactured by it is not part of the ship.
- ▶ The marine paints/ anti-fouling paints have special functionality to protect marine vessels and other carriers above and below the waterline. Applying of such paints increases the longevity and productivity of the vessel.
- ▶ The same is statutorily mandated for application on ships to make them sail-worthy under the Merchant Shipping Act, 1958 and that makes it an essential part of the ship. The concerned authorities can even detain a ship and levy penalty in case of non-compliances.
- ▶ Further, the Technical EIA Guidance Manual for Ship Breaking Yards published by the Ministry of Environment and Forests treats the lead-based anti-fouling coatings as part of the ship's structure.
- ▶ Both the Authorities are in complete error in stating that the ship can enter the water without anti-fouling paint, overlooking that it cannot sail as per the governing legal position.
- ▶ Moreover, the said Authorities ignored the laws laid in various decisions² which would demonstrate that anti-fouling paint is part of the ship and therefore, need to be taxed accordingly.
- ▶ Since both the Authorities have failed in applying the well-settled test and passed orders based on surmises and presumption, interference in writ jurisdiction with the impugned orders is necessary.
- ▶ Reliance can be placed upon the decision of Supreme Court (SC) in the case of Asahi India Safety Glass Ltd³ to contend that if wrong principles are applied by the Authorities, then the jurisdiction of HC under Article 226 of the Constitution is not ousted. Further, in the case of Columbia Sportswear Company⁴ it was held

that the judicial review of the decision of the Advance Ruling Authority under the Income Tax Act is maintainable.

Revenue's contentions

- ▶ The merits of the findings in the order passed by AAAR cannot be considered in writ jurisdiction. The division bench of the Bombay HC in the case of JSW Energy Limited⁵ has upheld that no appeal is provided against the order passed by AAAR. If there is absence of an appeal, that does not mean that powers of the writ court are enlarged to substitute the appellate remedy.
- ▶ The principles of natural justice were followed in the impugned case where the assessee was given the full opportunity. The Authorities have taken a particular view of the matter, which is *inter partes* binding upon the assessee.
- ▶ The sufficiency or adequacy of material is not open to judicial review, and if two views are possible, the writ court will not interfere⁶.
- ▶ Without prejudice to the above contentions, under the Merchant Shipping Act, the marine paint is one of the components of the anti-fouling system and not alone the entire anti-fouling system. The question in the impugned order was only relating to the paint and not about the anti-fouling system.
- ▶ Accordingly, there is no need to interfere with the impugned orders on merits, and the assessee cannot convert this proceeding to an appellate proceeding.

HC ruling

- ▶ The legislative scheme indicates that the advance ruling is distinct from the appeal and revision. The order of the AAR and AAAR is binding only on the applicant and the concerned jurisdictional officer in respect of such applicant. No further appeal is provided.
- ▶ This legislative scheme has to be kept in mind when the applicant challenges the order passed by the Authorities invoking writ jurisdiction.
- ▶ In the case of Asahi India Safety Glass Ltd (*supra*) a proposition was not laid down that the scope of writ jurisdiction against the AAR is akin to challenge as if it is an ordinary tribunal on all available grounds.
- ▶ Further, even the decision of SC in the case of Columbia Sportswear Company (*supra*) does not assist the case of the assessee.
- ▶ In the present case, the AAR and AAAR followed the entire procedure, and full opportunity was given to the assessee. There is no ground raised of breach of principles of natural justice on account of not giving an opportunity of being heard.
- ▶ Principally, the assessee seeks re-classification of its goods by the Authorities. The thrust of assessee's

² 1989 (39) ELT 169 (SC), 1994 (74) ELT 19 (SC), (2008) 12 SCC 45 and 1952 D. No. 1210

³ 2017 (50) STR 122 (SC)

⁴ (2012) 11 SCC 224

⁵ 2019 (27) GSTL 198 (Bom.)

⁶ (1998) 8 SCC 237

arguments before the Authorities centered around the legal provisions of the Merchant Shipping Act to demonstrate that the use of ship without marine paint is not legally permissible.

- Both the Authorities concluded that just because, as per the Merchant Shipping Act, the marine paint is mandatory to be applied, it does not become part of the ship. The conclusion arrived at by the Authorities cannot be said to be without considering the material on record.
- The Authorities have correctly focused on the meaning of the word “part” in terms of classification and have held that to make the vessel operative as a matter of mechanics, marine paint is not necessary. Assessee is mixing up legality with mechanics.
- There is no dispute regarding the fact that a ship can enter the water and sail without the marine/ anti-fouling paint. Thus, there is no fundamental legal error in the approach followed by the Authorities.

Once this is concluded, proceeding further to analyze would amount to exercising appellate jurisdiction.

- The judgements relied upon by the assessee to demonstrate that anti-fouling paint is part of the ship, did not arise from the same statutory provision as were before the Authorities in the present case. Both the Authorities have rightly analyzed such decisions to hold that it was in the context of marketability.
- Thus, the view taken by AAR and AAAR is based on the material placed before it. The assessee's intention to convert this limited enquiry into an appellate enquiry is not permissible to be undertaken in the writ jurisdiction.
- The Authorities have dealt the issue in *extenso*, having considered the submissions and the law cited. The view taken in the matter cannot be considered as suffering from fundamental error or absurd or perverse.
- Basis above, HC dismissed the petition filed by the assessee.

Comments

- a. In the past, HCs have entertained writ petitions against the orders passed by AAARs in cases where principles of natural justice were violated, proper procedures were not followed, or such orders exceeded the jurisdiction. In such cases, the Courts have remanded the matter back to AAAR for fresh consideration with specific directions.
- b. Since the advance rulings cannot be appealed before the courts on merits, taxpayers may consider adopting different route while taking a position on issues requiring interpretation of law.

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