IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.: 2970 of 2018

Date of Decision: 17.12.2018

M/s Scott Edil Pharmacia Limited

.....Petitioner.

Vs.

Assistant Commissioner, State Taxes and Excise and others

.....Respondents.

Coram:

The Hon'ble Mr. Justice Surya Kant, Chief Justice

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?[1]

For the petitioner:	M/s Vishal Mohan & Praveen Sharma, Advocates.
For the respondents:	Mr. Ajay Vaidya, Senior Additional Advocate General.

Surya Kant, Chief Justice *(Oral):*

The petitioner assails the Order dated 17th September, 2018 (issued on 9th October, 2018), passed by the Assistant Commissioner, State Taxes and Excise, Baddi, Circle-1, whereby the petitioner-Company has been held guilty of suppressing Gross Turn Over of ₹95,90,00,000/- and consequently, it has been subjected to SGST and penalty to the tune of ₹23,01,60,000/-.

2. Though learned counsel for the petitioner fairly submits that the above stated order is appealable before the Commissioner (Appeals) under Section 107 of the Central Goods and Services Tax Act, 2017,

1 Whether the reporters of the local papers may be allowed to see the Judgment?

however, no such Appellate Forum has been notified by the State of Himachal Pradesh, due to which, the petitioner has been denied its valuable right of appeal, leaving no other option but to file the instant Writ Petition. Various contentions on merits as well as re: violation of the principles of natural justice and fair play have also been raised. The competence of the Authority, who has passed the impugned order, is also questioned.

3. On the other hand, learned Senior Additional Advocate General, submits that the Assistant Commissioner, State Taxes and Excise, is fully authorized to pass the subject order. He refers to various proceedings to urge that the petitioner's representatives have been adequately heard and thus, there is no violation of the principles of natural justice and fair play. Nonetheless, he admits that no Appellate Forum has been notified so far.

4. In view of the fact that the Statute contemplates the remedy of appeal, we are of the view that the aggrieved party cannot be left remedyless merely because the State Government has not notified the Appellate Forum. The Writ Petition is accordingly disposed of with a direction to the Additional Chief Secretary-cum-Financial Commissioner, State Taxes and Excise, to notify the Appellate Forum within one week. The petitioner may, if so advised, file an appeal within one week from the date the Appellate Forum is notified. Till such time, no coercive action be

taken against the petitioner. It is clarified that we have not expressed any views on merits.

With the aforesaid observations/directions, the writ petition stands disposed of, so also pending miscellaneous application(s), if any.

(Surya Kant)
Chief Justice

(Ajay Mohan Goel)
Judge

December 17, 2018
(bhupender/yashwant)