IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(C).No. 20136 of 2015 (N)

PETITIONER(S):

GLOBAL UNITED SHIPPING INDIA PRIVATE LIMITED,
6TH FLOOR, ARAYBHANGI PINNACLE, KADAVANTHRA
ERNAKULAM
REPRESENTED BY ITS LEGAL MANAGER PROMY GANGADHARAN
AGED 40 YEARS, S/O.GANGADHARAN, LEGAL MANAGER
GLOBAL UNITED SHIPPING INDIA PVT.LTD.
ARAYBHANGI PINNACLE, KADAVANTRA, ERNAKULAM.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENT(S):
----

1. THE DEPUTY COMMISSIONER,SERVICE TAX DIVISION,
   CENTRAL EXCISE BHAVAN, KATHRIKADAV, COCHIN-682 017.

2. DEPUTY COMMISSIONER OF CUSTOMES(REFUNDS),
   OFFICE OF THE COMMISSIONER OF CUSTOMES (PORT-EXPORT)
   CUSTOM HOUSE, NO.60, RAJAJAI SALAI
   CHENNAI-600 001.

3. COMMISSIONER(APPEALS-II),
   OFFICE OF THE COMMISSIONER OF CUSTOMES(APPEALS-II)
   CUSTOM HOUSE, NO.60, RAJAJI SALAI
   CHENNAI-600 001.

R1-R3 BY ADV. SRI.SAIBY JOSE KIDANGOOR
R BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 20136 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1: **THE TRUE COPY OF THE ORDER IN APPEAL C CUS NO.949/2012 DATED 22.08.2012 PASSED BY THE COMMISSIONER OF CUSTOMES (APPEALS),CHENNAI.**

EXHIBIT.P2: **THE TRUE COPY OF THE ORDER NO.29245/14 DATED 04.09.2014 ISSUED BY THE 2ND RESPONDENT.**

EXHIBIT P3: **A COPY OF THE SAID RECTIFICATION APPLICATION DATED 08.10.2014 FILED BEFORE THE 2ND RESPONDENT.**

EXHIBIT P4: **A COPY OF THE REQUEST LETTER DATED FILED BEFORE THE 1ST RESPONDENT 08.10.2014.**

EXHIBIT P5: **A COPY OF THE ABOVE SAID REMINDER LETTER DATED 03.12.2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**

EXHIBIT P6: **THE TRUE COPY OF THE JUDGMENT DATED 20/2/15 IN W.P.C-4721/15.**

EXHIBIT P7: **THE TRUE COPY OF THE ORDER NO.C3-II/270/R/2015 SEA DATED 29/5/15 ISSUED BY THE 2ND RESPONDENT IN APPEAL NO.508/15.**

RESPONDENT(S)' EXHIBITS
-------------------------------------- **nil**

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

===

W.P.(C). No. 20136 of 2015

==

Dated this the 8th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 order passed by the 3rd respondent, who is the appellate authority under the Customs Act, and situated in Chennai. The grievance of the petitioner is that by Ext.P7 order, the 3rd respondent had rejected the appeal preferred against an order of the original authority, rejecting the petitioner's application for refund of customs duty that was paid by the petitioner at the time of import of the goods in question. In Ext.P7 order, the reason given by the 3rd respondent for rejecting the appeal is that the petitioner had not established before him that there was a non-availment of CENVAT credit, which was a precondition for the sanctioning of refund under the Customs Act. The petitioner would contend that this is a matter which also involves the service tax division in Kochi, inasmuch as they are the persons who have to give a clarification with regard to non-availment of CENVAT credit by the petitioner, and hence, this Court would have jurisdiction to entertain the writ petition against Ext.P7 order. It is on this premise that the present writ petition has been filed seeking, inter alia, to quash Ext.P7 order and to issue a direction to the 2nd respondent to refund amounts that are allegedly due to the petitioner.

2. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel appearing for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the challenge in the writ petition is against an appellate order passed under the Customs Act. The appellate authority rejected the appeal filed by the petitioner against Ext.P2 order of the 2nd respondent. Both the 2nd respondent, original authority as well as the 3rd respondent, appellate authority are situated in Chennai, within the jurisdiction of the Madras High Court. Going by the decision of the Hon'ble Supreme Court in **Ambica Industries** v. **Commissioner of Central Excise** [**2007 (6) SCC 769**], the High Court having jurisdiction to entertain writ petitions against orders passed by the appellate authorities under the Customs Act, would be the High Court having jurisdiction over the original authority, that passed the first order in adjudication proceedings under the said Act. Applying this test, the jurisdictional High Court in the instant case would be the Madras High Court and not the Kerala High Court. I also note that against Ext.P7 order, the petitioner has an effective alternate remedy by way of an appeal before the Customs, Excise and Service Tax Appellate Tribunal, under Section 129E of the Customs Act. Thus, in any view of the matter, I do not see any reason to entertain this writ petition, challenging Ext.P7 order of the 3rd respondent. The writ petition fails, and is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das