IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.5501 of 2016 and
W.M.P.No.4842 of 2016

ETA General Private Limited,
rep by its Additional General Manager
(Commercial) B.T.Prabahar,
No.71/63, Sterling Road,
Nungambakkam, Chennai - 600 034. ... Petitioner

Vs.

1.The Additional Commissioner
of Central Excise,
Office of the Commissioner
of Central Excise,
Chennai I Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.Commissioner of Service Tax (Appeals - II),
No.2054, II Avenue, Newry Towers,
12th Main Road, Anna Nagar,
Chennai - 600 040. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari calling for the records of the 2nd respondent in Order-in-appeal No.349/2015 (STA-II) dated 30.11.2015 passed by the 2nd respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondents : Mr.A.P.Srinivas

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorari to call for the records of the 2nd respondent in the Order passed in Appeal No.349/2015 (STA-II) dated 30.11.2015 passed by the 2nd respondent and quash the same.

2.Mr.A.P.Srinivas taking notice for the respondents submitted that the petitioner has got an appeal remedy as against the impugned order dated 30.11.2015 before the

Customs, Excise and Service Tax Appellate Tribunal (CESTAT), therefore, the Writ Petition deserves to be dismissed.

3.The learned counsel appearing for the petitioner submitted that the Writ Petition is maintainable for the reason that in the impugned order, the 2^{nd} respondent not only held that the appeal is barred by limitation, but also went on to decide the appeal on merits. The learned counsel submitted that when the 2^{nd} respondent had found that the appeal is time barred, the 2^{nd} respondent should not have gone into the merits of the matter. Even as against the impugned order passed by the 2^{nd} respondent, deciding the question of limitation as well as on merits, when the petitioner has got appeal remedy before the CESTAT, the petitioner should have approached only the CESTAT. However, in the affidavit filed in support of the Writ Petition, the petitioner has stated that they have got no other alternative or efficacious remedy available, hence, they are invoking the extraordinary jurisdiction available under Article 226 of the Constitution of India.

4.When the petitioner has got appeal remedy before the CESTAT the averment stated in the affidavit cannot be accepted. In these circumstances, the Writ Petition is liable to be rejected. Accordingly, the Writ Petition is dismissed. The petitioner is at liberty to challenge the impugned order dated 30.11.2015 before the CESTAT. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

va
To
1.The Additional Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
Chennai I Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.Commissioner of Service Tax (Appeals - II),
No.2054, II Avenue, Newry Towers,
12^{th} Main Road, Anna Nagar,
Chennai - 600 040.
+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.9501
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.9672

VSN(CO)
EU(24/02/2016)

W.P.No.5501 of 2016 and
W.M.P.No.4842 of 2016