IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29693 of 2004 and
W.P.M.P.No.36057 of 2004

Tvl.Prabha Industries,
Represented by its Proprietrix,
Ms.A.Swayam Prabha,
No.60, Fort Main Road,
Shevapet, Salem – 636 002. .. Petitioner

Vs.

1.The Assistant Commissioner of Central Excise,
Division II, Erode.

2.The Superintendent of Central Excise,
Thiruchengodu Range, Tiruchengodu – 637 211.

3.The Deputy Commissioner of Customs,
(Group-VII),
Customs House, Cochin-9.

4.The Commissioner of Central Excise,
Salem.

5.The Deputy Commissioner of Central Excise,
Erode Division, Erode.

6.The Commissioner of Customs (Appeals),
Customs House, Cochin-9.

7.Sri Krishna Smelters Ltd.,
S.F. No.110/IDI, 110/1-E Iveli Village,
Akkamapet P.O.
Sankari Durg – 637 301,
Salem District. .. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records on the files of the sixth respondent in F.No.C27/Group VII/129/2003 AU. Cus dated 23.06.2004 and quash the same as being invalid, illegal and unjustified on facts and law and directed the first respondent and fifth respondent.

For Petitioner : Mr.R.Senniappan

For Respondents 1 to 6 : Mr.K.Magesh
Standing Counsel

For 7th Respondent : Mr.K.Jayachandran

ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner; Mr.K.Magesh, learned Standing Counsel for respondents 1 to 6 and Mr.K.Jayachandran, learned counsel for the 7th respondent.

2.The petitioner challenges an Order in Appeal passed by the Commissioner of Customs (Appeals), Cochin dated 21.06.2004.

3.The learned Standing Counsel for the Customs Department raised a preliminary objection as regards maintainability of the writ petition on the ground that this Court does not have territorial jurisdiction to entertain this Writ Petition. To support his contention, reliance has been placed on the decision of the Division Bench of this Court [in which I am one of the party] in ***Zeenath International***

Supplies V. Commissioner of Customs, Visakhapatnam, 2014 (304) E.L.T. 491 (Mad.). The Division Bench considered the issue relating to the territorial jurisdiction and held that the appeal was not maintainable before this Court. The operative portion of the order reads as follows:

> "15.Even in the case of Cannon Steels P. Ltd. (supra), ultimately, the Hon'ble Supreme Court held that the Punjab & Haryana High Court was jusitified in its view as the Origional adjudication order and the appellate order were not issued by any authority within its territorial jurisdiction, but considering that no person should be left without the remedy though the case was withdrawn by the assessee, direct the restoration of the said case as undisputably, the Delhi High Court has jurisdiction to deal with the matter and the Delhi High Court was directed to deal the matter on merits. Therefore, the decision in the case of the Canon Steels P. Ltd., (supra), does not in any manner advance the case of the appellant and the decision of the Hon'ble Supreme Court in the case of Ambica Industries, referred supra, would be squarely applicable to the facts of the case.
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> 16.The learned counsel by placing reliance on the decision of the Full Bench of this court in the case of Sanjos Jewellers V.

Syndicate Bank (supra), and submitted that this Court would have territorial jurisdiction . Firstly, it is to be noted that both the cases before the Full Bench as well as in the case o R.Raman V. National Insurance Company Ltd., (supra), arose out of a writ petition under Article 226 of the Constitution of India and by taking into consideration clause (2) of Article 226, the decision was rendered. Nevertheless, when there is a conclusion that the litigation amounts to forum shopping, the Court would refuse to exercise discretion to entertain a writ petition. In this regard, reference was made to the decision of this Court in the case of Bhanu Construction Co. (P) Ltd. V Andhra Bank, reported in (2005) 5 CTC 721. Similarly in the case of R.Raman V. National Insurance Company Ltd. (supra), the decision was rendered with reference to jurisdiction to issue a writ under Article 226 of the Constitution of India in the light of clause (2) of Article 226. Therefore, the decisions are wholly inapplicable to the facts of the case on hand, we have no hesitation to hold that the appeal filed by the appellant before this Court is not maintainable in the light of the law laid down by the Hon'ble Supreme Court in the case of Ambica Industries, referred supra."

4.The learned counsel for the writ petitioner agrees that the said Division Bench Judgment is against the petitioner and the writ petition is not maintainable before this Court. Therefore, the learned counsel submits that liberty may be given to the petitioner to approach the CESTAT, Bangalore.

5.In the light of the above, the Writ Petition stands dismissed as not maintainable. However, liberty is granted to the petitioner to approach the CESTAT, Bangalore and the CESTAT shall exclude the period from 23.06.2004, till the receipt of the certified copy of this order, while computing limitation in the appeal to be filed by the petitioner. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

29.08.2016

Index : Yes/No
Internet : Yes/No

sgl

T.S.SIVAGNANAM, J.,

sgl

To

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