BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.19246 of 2016
and
W.M.P(MD)No.13893 of 2016

K.S.Murugan
(Managing Director of
M/s.MKS Shipping Agencies Pvt Ltd.,)
Managing Partner of
M/s.Green Port Shipping Service
(P) Ltd., No.26 C/1B, Kamraj Nagar,
Tuticorin 628 008 ...Petitioner

Vs.

The Commissioner of Customs
Custom House,
New Harbour Estate,
Tuticorin. ...Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent in Order No.7 dated 31.03.2016 quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.P.Saravanan
For Respondents : Mr.S.Gurumurthy

ORDER

Challenging the order-in-original passed by the Commissioner of Customs, Tuticorin in Order No.7, dated 31.03.2016, the petitioner has filed this writ petition.

2.Admittedly, against the order passed by the first respondent, there is an appeal remedy available before the Customs Excise and Service Tax Appellate Tribunal (CESTAT). The appellate remedy provided under the Act before the CESTAT is not only an efficacious but an effective remedy and the CESTAT is entitled to appreciate and re-appreciate the facts and hence, without exhausting such remedy, the petitioner cannot maintain this writ petition under Article 226 of the Constitution of India.

3.Learned counsel appearing for the petitioner vehemently contended that the first respondent without affording an opportunity to cross examine some co-noticees and without considering his reply to the show cause notice, passed the impugned order in violation of principles of natural justice. He would further contend that since the petitioner has to deposit certain amount for filing an appeal before the Tribunal, the appellate remedy is not an efficacious one. Hence, the petitioner has filed this writ petition.

4.Per contra, learned counsel for the respondent would submit that the petitioner himself has given a statement before the authorities under Section 108 of the Customs Act, admitting the role played by the co-noticees and he has not retracted the above statement before the authorities. Therefore, there is no necessity for cross examining the co-noticees and it is mandatory to deposit amounts before filing appeal before the Tribunal and it cannot be a ground to bypass the alternative remedy and there is no infirmity in the order warranting this Court to interfere with the impugned order.

5.Since disputed question of facts are to be examined while considering the validity and correctness of the impugned order, this Court is not in a position to entertain this writ petition. Therefore, this Court is of the view that the petitioner should exhaust the appeal remedy available under the Act and no grounds have been made out by the petitioner to justify in bypassing the remedy before the CESTAT.

6.In the above circumstances, the writ petition is dismissed giving liberty to the petitioner to approach the CESTAT for availing appellate remedy, if he is so advised. No costs. W.M.P(MD)No.13893 of 2016 is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
The Commissioner of Customs
Custom House,
New Harbour Estate,
Tuticorin.

+1cc to M/s.P.Saravanan, Advocate in SR.59582
+2cc to M/s.S.Gurumoorthy, Advocate in SR.59462

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and
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sms
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