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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2016

Coram

THE HONOURABLE MR.JUSTICE K.RAVICHANDRA BAABU

W.P.(MD)No.24708 of 2016

and

W.M.P.(MD).Nos.17809 and 17810 of 2016

M/s.Silver Spring Spinners India (P) Limited,
rep. By its Managing Director
Mr.R.Sridhar,
S.No.136 & 137, Mullikulam Village,
Malli (PO)-141,
Srivilliputhur, TamilNadu.

: Petitioner

vs.

1 The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-04.

2 THE Additional Commissioner of Customs (Exports)
Custom House, New Harbour Estate.
Tuticorin-04.

3 The Assistant Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-04.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issue of a WRIT OF CERTIORARIFIED MANDAMUS to call for the records pertaining to the impugned order No.734/2013, dated 30.03.2013 in F.No.9/87-EPCG, passed by the 3rd respondent and to quash the same and further direct the 3rd respondent herein to rehear and dispose off the same on merits after affording an opportunity of personal hearing and considering the EODC already furnished by the petitioner herein.

For Petitioner : Mr.A.K.Jeyaraj

For Respondents : Mr.R.Nandakumar

Central Government Standing Counsel

O R D E R

This writ petition is filed challenging the order in original passed by the third respondent on 30.03.2013 and subsequently, for a direction to the third respondent to rehear and dispose of the matter once again on merits after affording an opportunity of personal hearing and considering the EODC already furnished by the petitioner.



2. Heard Mr. A.K. Jeyaraj, learned counsel appearing for the petitioner and the learned Central Government Standing Counsel appearing for the respondents and perused the materials placed before this Court.

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3. What is under challenge in this writ petition is an order in original dated 30.03.2013, passed by the third respondent. It is not in dispute that as against the said order, a statutory appeal lies before the appellate authority.

4. The learned counsel for the petitioner wants to sustain the maintainability of this writ petition by contending that certain subsequent developments that had taken place would come to the rescue of the petitioner for deciding the matter once again by the Original Authority, if an opportunity of hearing is given to the petitioner once again. He further contended that the present impugned order also came to be passed without serving a notice on the petitioner.

5. This Court has taken a consistent view in several matters that when the statute provides for filing an appeal against the order in original, the same cannot be challenged by filing a writ petition, by way of short circuiting the procedures. Needless to say that the appellate authority being a fact finding authority as well, will have to consider all aspects and decide the appeal. Therefore, the petitioner should go only before the appellate authority and raise all the contentions, including the reference to the events which had taken place subsequent to the passing of the impugned order. No doubt, this impugned order came to be passed on 30.03.2013 and the present writ petition is filed only in the year December 2016. But, however, perusal of the impugned order would show that the personal hearing notice sent to the petitioner was affixed and intimation letters were returned as undelivered. It is stated by the petitioner that they have changed the address and hence, they were not in a position to appear before the respondent for personal hearing. All these contentions can be raised before the appellate authority, while filing the appeal against the order in original.

6. Accordingly, this writ petition is dismissed without going into the merits of the matter, however, by granting liberty to the petitioner to file an appeal before the appellate authority by raising all the points, within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is filed within the time stipulated supra, the appellate authority shall consider the appeal on merits and pass orders in accordance with law, without reference to the delay in filing such appeal.

that dismissal of this writ petition only on the ground of maintainability cannot stand in the way of the respondent in considering the matter on its own merits and in



accordance with law. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(W)

/True Copy/

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

To

- 1 The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-04.
- 2 THE Additional Commissioner of Customs (Exports)
Custom House, New Harbour Estate.
Tuticorin-04.
- 3 The Assistant Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-04.

+1cc to M/s.R.Nandakumar, Advocate in SR. 82843

+1cc to M/s.A.K.Jeyaraj, Advocate in SR.82875

W.P.(MD)No.24708 of 2016
22.12.2016

vs

PBK/SKN/SAR-3 12/01/2017 ::3P-6C: