

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 41513 of 2016

ORDER: (*Per VRS,J*)

The petitioner has come up with the above writ petition, challenging an order in original passed by the 1st respondent, namely, the Additional Commissioner of Customs, Central Excise and Service Tax.

2. Heard Mr. Tej Prakash Toshniwal, learned counsel for the petitioner. Mr. B. Narayana Reddy, learned Assistant Solicitor General, takes notice for the respondents.

3. The grievance of the petitioner to the order in original are three-fold, namely, (a) that the order in original travels beyond the contents of the show-cause-notice, (b) that the demand now made in the order in original covers transportation charges, over which, service tax has already been paid, and (c) that none of the contentions raised by the petitioner and the citations relied upon by them, have been dealt with in the order in original, vitiating the order for non-application of mind.

4. But, all the above three grounds do not entitle the petitioner to bypass the alternative remedy of an appeal available under Section 35(1) of the Central Excise Act, 1944. The order in original is not so shocking to the conscience of this Court, so as to permit the remedy to be bypassed.

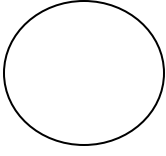
5. Therefore, leaving it open to the petitioner to exhaust the alternative remedy, the Writ Petition is dismissed. The Registry is directed to return the original order to enable the petitioner to file a regular statutory appeal. Since it appears that today is the last date for filing an appeal, the petitioner shall file the statutory appeal on or before 12.12.2016. Upon the appeal so being filed, the Commissioner (Appeals) shall condone the delay and take up the appeal for consideration.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

30th November, 2016
cbs



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