IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.8834 to 8837 of 2017
and
W.M.P.Nos.9689 to 9694 of 2017

M/s.Mantra Industries Limited,
Represented by K.Ananda Kala, Authorised Signatory,
S.F.No.249/1A (1), Kadathur, Kattampatty Village,
Annur, Avinashi (T.K.)
Coimbatore 641 107.
...Petitioner in WP Nos.8834 and 8835 of 2017

G.Velmurugan,
In-charge, M/s.Mantra Industries Limited,
S.F.No.249/1A (1), Kadathur, Kattampatty Village,
Annur, Avinashi (T.K.)
Coimbatore 641 107.
...Petitioner in WP Nos.8836 and 8837 of 2017

Vs.

The Commissioner of Central Excise Customs & Service Tax,
6/7, ATD Street, Race Course,
Coimbatore 641 018 ...Respondent in all the WPs

Prayer: These writ petitions are filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the respondents in Order Sl.No.46/2016-Commr, Sl.No.47/2016-Commr, Sl.No.46/2016-Commr and Sl.No.47/2016-Commr respectively, dated 30.11.2016 and quash the same.

For Petitioners in all the W.Ps.: Mr.A.R.L.Sundaresan
Senior Counsel for
Mr.S.Durairaj

For Respondent in all the W.Ps.: Mr.A.P.Srinivas
Standing Counsel

COMMON ORDER

In all these writ petitions the respective petitioners challenged the order in original passed by the Commissioner of Central Excise, Coimbatore-18.

2. The first respondent/adjudicating authority, by way of the impugned orders, confirmed the demand of differential duty of Rs.14,81,87,476/-; confirmed the demand of an amount of Rs.47,70,408/- being irregular Cenvat credit; imposed a penalty of Rs.14,81,87,476/- under section 11AC of Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004; imposed a penalty of Rs.15,00,000/- on the petitioner in WP.Nos.8836 and 8837 of 2017 being the incharge of the petitioner company; appropriating an amount of Rs.20,00,000/- paid by the petitioner company; confirmed the demand of Central Excise Duty of Rs.5,22,76,107/- being the duty short levied and short paid during the period from July 2015 to January 2016; confirmed the demand of interest; imposed a penalty of Rs.5,22,76,107/- under section 11AC of Central Excise Act, 1944 and imposed a penalty of Rs.5,00,000/- on the petitioner in WP.Nos.8836 and 8837 of 2017 being the in-charge of the petitioner Company.

3. Heard Mr.A.R.L.Sundaresan, learned senior counsel appearing for the petitioners and the learned Standing Counsel appearing for the respondent.

4. These writ petitions are listed before this Court today for admission.

5. Admittedly, as against the order in original passed by the respondent, which is impugned in these writ petitions, a statutory appellate remedy lies before the Appellate Tribunal. However, the petitioners seek indulgence of this Court to entertain these writ petitions by contending that the first respondent has not applied a binding decision of the Tribunal made in "Butterfly Gandhimathi Appliances vs. Commissioner of Central Excise, Chennai III" case, since the issue involved in the said case and the facts and circumstances of the present case are one and the same. Therefore, the learned senior counsel submitted that this Court can entertain the writ petitions and find out as to whether the facts and circumstances of the present cases would fall within the purview of the decision made by the Tribunal in the Gandhimathi Appliances case.

6. I do not think that the learned senior counsel is justified in his contention to maintain these writ petitions simply on the ground that the respondent has failed to follow the decision made in Gandhimathi Appliances case. Admittedly, the said decision relied on by the petitioners is the one made by the Tribunal. The respondent in his order at paragraph No.45, has given some reasons as to why he is refraining himself from taking a decision based on the above order of the Tribunal. He has specifically pointed out that the details of the contracts between the said Unit namely Butterfly Gandhimati Appliances and the Tamil Nadu Civil Supplies Corporation as well as the copies of the invoices and the returns are not made available by the petitioners. Thus, it

appears that the adjudicating authority was not in a position to appreciate the similarity of facts and circumstances between the case on hand and the Butterfly Gandhimati Appliances case. Therefore, it is evident from the finding of the respondent that he wants to distinguish the said decision which is sought to be relied on by the petitioners. Needless to say that the question of applicability of a case law to a particular case depends upon the facts and circumstances of both cases and unless they are similar and one and the same, one cannot make emphasis on such particular case law or decision. But, at the same time, it is to be noted that this Court in this case is not expressing any view as to whether the Gandhimathi Appliances case would apply to the facts and circumstances of the present case or not, as it is for the next fact finding authority, namely, the Appellate Tribunal to go into the same and decide about its applicability. Since such fact finding exercise, which according to my considered view, has to be necessarily done in this case by the Appellate Tribunal, I do not think that the petitioner can skip or bypass such alternative statutory appellate remedy and file the present writ petitions.

7. Admittedly, the petitioners are not questioning the jurisdiction of the respondent in any manner. It is well settled that in fiscal matters, short circuiting the proceedings by way of filing the writ petitions cannot be entertained, unless the order passed was without jurisdiction or the same is erroneous on the face of it. Needless to say that even to give such finding, if a thorough probe of the matter is required, owing to the facts and circumstances of a particular case, the discretionary jurisdiction under Article 226 of Constitution of India, need not be exercised. This Court has taken similar view in a recent order made in WP.No.8553 of 2017 dated 10.04.2017 by following the decision of the Apex Court, as well as the Division Bench of this Court and dismissed the writ petition with liberty to the petitioner therein to file an appeal. At this juncture, it is useful to refer to the following decisions:-

i) M/s.Nivaram Pharma Private Limited, rep. By its Director Sardarmal M.Chordia, Madras -vs- The Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras and others reported in (2005) 2 MLJ 246(DB).

ii) United Bank of India -vs- Satyawati Tondon and others reported in (2010) 8 SCC 110.

iii) Raj Kumar Shivahare -vs- Assistant Director, Directorate of Enforcement and Another reported in (2010) 4 SCC 772.

iv) Metal Weld Electrodes -vs- CESTAT, Chennai reported in 2014 (299) ELT 3 DB.

8. It is held in those cases that when an alternative remedy is available, more particularly, in the cases of fiscal nature, invoking of the jurisdiction under Article 226 of the

Constitution of India, is not permissible. When the petitioner is having an alternative remedy of appeal to file the appeal before the CESTAT, it is for them to file such appeal and canvass all the points. This Court exercising discretionary jurisdiction under Article 226 of the Constitution of India, is not inclined to entertain these writ petitions only on the reason of availability of alternative remedy.

9. Therefore, I am of the view that the present writ petitions are not maintainable before this Court as the petitioners have to avail the alternative appellate remedy of appeal before the Appellate Tribunal. Accordingly, the writ petitions are dismissed with liberty to the petitioners to file such appeal within a period of four weeks from the date receipt of a copy of this order. If any such appeal is filed, the same shall be considered and decided on its own merits and in accordance with law, without reference to the period of limitation, if the said limitation got expired in the mean time. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

vsi/sai

To

The Commissioner of Central
Excise Customs & Service Tax,
6/7, ATD Street, Race Course,
Coimbatore 641 018

+4cc to M/s.Durairaj,Advocate sr.22310 to 22313

+1cc to M/s.A.P.Srinivas,Advocate sr.22413

W.P.No.8834 to 8837 of 2017

mp(co)
ss(24/4/2017)