IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.Nos.723 to 726 of 2017
and CMP Nos.10005 to 10007 and 10009 of 2017

1. P.John Joseph .. Appellant in W.A.No.723 of 2017
2. B.Saseedharan .. Appellant in W.A.No.724 of 2017
3. N.Sunitha .. Appellant in W.A.No.725 of 2017
4. P.Shanmugam .. Appellant in W.A.No.726 of 2017

versus

The Joint Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem - 636 001. .. Respondent in all W.As.

Writ Appeals filed against the common order dated 13.03.2017 made in W.P.Nos.4336 to 4338 and 5571 of 2017.

Prayer in W.P.4336/2017: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the respondent in Order in Original SI.No.75/2016 ST (JC) dated 09.11.2016 and quashing the same and consequently, direct the respondent to adjudicate the matter afresh after issuing fresh show cause notice within the jurisdiction of Section 73 of the finance Act,1994 by incorporating the materials collected from the Courier Agency.

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Prayer in W.p.4337/2017: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified mandamus to call for the records of the respondent in Order in Original Sl.No.77/2016-ST (JC) dated 9.11.2016 and quashing the same and consequently, direct the respondent to adjudicate the matter afresh after issuing fresh show cause notice within the jurisdiction of Section 73 of the Finance Act 1994 by incorporating the materials collected from the courier Agency.

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Prayer in W.p.4338/2017: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified mandamus to call for the records of the respondent in Order in Original Sl.No.76/2016-ST (JC) dated 9.11.2016 and quashing the same and consequently direct the respondent to adjudicate the matter afresh after issuing fresh show cause notice within the jurisdiction of Section 73 of the Finance Act 1994 by incorporating the materials collected from the courier Agency.

Prayer in W.p.5571/2017: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified mandamus to call for the records of the respondent in Order in Original Sl. No.74/ 2016- ST (JC) dated 09.11.2016 and quashing the same and consequently direct the Respondent to adjudicate the matter afresh after issuing fresh show cause notice within the jurisdiction of Section 73 of the Finance Act 1994 by incorporating the materials collected from the courier Agency.

For Appellant : Ms.D. Naveena
in all W.As.

COMMON JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Challenging the order in original dated 09.11.2016 of the Joint Commissioner of Central Excise, Salem, writ petitions have been filed contending inter alia that some materials have been collected by the adjudicating authority, after hearing and that therefore, orders in original are in violation of principles of natural justice. On behalf of the respondents, before the writ Court, objections have been raised on the grounds that when there is an effective and alternative remedy, by way of an appeal, writ petitions should not be entertained.

2. Without expressing any view on the merits of the matter, writ Court and following a decision of this Court in W.P.(MD) Nos.121 and 122 of 2017 dated 15.01.2017, dismissed all the writ petitions. While doing so, at paragraph No.13 of the common order, writ Court has also granted liberty to the appellants herein to file appeal before the appellate authority within a period of four weeks from the date of receipt of a copy of the common order and if any such appeal is filed, directed the appellate authority to consider and pass orders on the same on its own merits and in accordance with law, without reference to the limitation, in view of the filing of those writ petitions

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and the common order passed therein. At paragraph No.12 of the common order, the writ Court considered the decisions of the Hon'ble Supreme Court and ordered as follows:

> "12. This Court has decided the similar issue regarding maintainability of writ petition in W.P.(MD) Nos.121 and 122 of 2017 dated 15.01.2017, wherein it has been observed at paragraph Nos.14 to 16 as follows:
>
> "14. This Court has consistently taken the view that as against the show-cause notice or the order in original, filing of writ petition cannot be entertained by way of short-circuiting the procedures, especially when a statutory remedy is available for the petitioner to go before the competent original or appellate authority, more particularly, when the factual aspects of the matter have to, necessarily, be gone into only by those authorities vested with such power under the statute.
>
> 15. At this juncture, it is relevant to quote the following decisions, which were followed by this Court in very many cases while deciding the similar issue:
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> 1) M/s.Nivaram Pharma Private Limited rep. by its Director Sardarmal M.Chordia, Madras-Vs-The Custom, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras and others reported in (2005) 2 MLJ 246 (DB).
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> 2) United Bank of India - Vs.- Satyawati Tondon and others reported in (2010) 8 SCC 110.
>
> 3) Raj Kumar Shivhare - Vs. - Assistant Director, Directorate of Enforcement and Another reported (2010) 4 SCC 772.
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> 4) Metal Weld Electrodes - Vs.- CESTAT, Chennai, reported in 2010 (299) ELT 3 DB.
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> 16. In the above decisions, it has been held 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."

3. Though, Ms.Naveena, learned counsel for the appellants, reiterated the very same grounds and sought for reversal of the common order, this Court is not inclined to accept the said contentions, for the reasons that writ Court has considered the decisions of the Hon'ble Apex Court while deciding maintainability of writ petitions. When an alternate remedy is available, more particularly, in a case of fiscal nature. we do not find any error in the common order. Hence, while dismissing the writ Appeals, we reiterate the directions given by the writ Court at paragraph No.13 of the common order, regarding the

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liberty granted and other aspects. Time is extended by four weeks from the date of receipt of the common judgment made in W.A.Nos.723 to 726 of 2017.

4. Writ Appeals are dismissed on the above terms. No costs. Consequently, the connected Civil Miscellaneous Petitions are dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ars

To

The Joint Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem - 636 001.

+1cc to M/s.D.Naveena, Advocate, S.R.No.49780

W.A.Nos.723 to 726 of 2017
and CMP Nos.10005 to 10007
and 10009 of 2017

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