BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.04.2017

CORAM
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P(MD)No.7089 of 2017
and W.M.P. (MD) No.5605 of 2017

P.Maheswari ..Petitioner

Vs

1.The Union of India,
Represented by its Secretary to Government,
Ministry of Finance,
New Delhi.
2.The Commissioner of Central Excise,
Customs and Service Tax,
Central Revenue Building,
NGO – A Colony,
Thirunelveli – 627 007.
3.The Joint Commissioner of Central Excise,
Customs and Service Tax,
Central Revenue Building,
NGO – A Colony,
Thirunelveli – 627 007.
4.The Assistant Commissioner of Central Excise,
Kovil Patti Division,
Catholic Centre Building,
No.913, Main Road,
Kovil Patti – 628 501.
5.The Superintendent of Central Excise,
Ettayapuram Range,
Kovil Patti. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order in Original No.28/AC/CE/2017, C.No.V/36/15/22/2011, dated 27.03.2017 passed by the 4th respondent and quash the same and to direct the respondents not to demand any Excise Duty from the Petitioner for the arrears of Excise Duty payable by M/s.Thangam Match Works, Keelaearal, Tuticorin District.

For Petitioner :Mr.M.Md.Ibrahim Ali
For 1st Respondent :Mr.C.Nandagopal
Central Government
Standing Counsel
For Respondents 2 to 5 :Mr.R.Nandakumar

ORDER

The petitioner has approached this Court seeking quashment of the Order in Original No.28/AC/CE/2017, C.No.V/36/15/22/2011, dated 27.03.2017 passed by the 4th respondent and to direct the respondents not to demand any Excise Duty from the Petitioner for the arrears of Excise Duty payable by M/s.Thangam Match Works, Keelaearal, Tuticorin District.

2.By the impugned order a demand was made to the petitioner for Rs.12,93,219/- under the provisions of the Central Excise Act, 1944 and also through the Rules framed thereunder. According to the impugned order, an appeal will lie before the Commissioner (Appeals), Office of the Commissioner, Coimbatore at Madurai.

3.The learned counsel appearing for the petitioner would submit that the order passed by the 4th respondent suffers from want of jurisdiction and the petitioner is not liable to pay any amount as claimed in the impugned demand. According to the learned counsel for the petitioner, the 4th respondent has not considered the submissions made on behalf of the petitioner, but the order was passed mechanically without proper application of mind.

4.Per contra, Mr.R.Nandakumar, learned Standing Counsel for respondents 2 to 5 would submit that when there is an effective alternative remedy available to the petitioner the same shall be exhausted.

5.I have considered the rival submissions and perused the materials available on record.

6.Without exhausting the effective alternative remedy available under the statute, the petitioner has rushed to this Court invoking the extraordinary jurisdiction of this Court under Section 226 of the Constitution of India. When an effective alternative remedy is available, the intervention of this Court for judicial review of the order passed by the authorities is not maintainable.

7.In such circumstances, this Court is of the considered view that the present Writ Petition cannot be entertained at this stage. It is open to the petitioner to approach the appellate authority as indicated in the impugned order. In the appeal, it is always open to the petitioner to urge whatever grounds in support of her defence and the appellate authority while exercising the statutory duty consider all the issues involved. It is also made clear that till the appeal is disposed of by the appellate authority the impugned order need not be acted upon.

8.With these observations, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected

Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
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5.The Superintendent of Central Excise,
Ettayapuram Range,
Kovil Patti.

+1cc to Mr.Mohammed Ibrahim Ali,Advocate,SR.52728
+1cc to Mr.C.NandaGopal,Advocate,SR.52704
+1cc to Mr.R.Nandhakumar,Advocate,SR.52662

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19.04.2017

SJ
kk/SKN SAR3-24.04.2017-3P-9C