

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.5310 of 2017

Order: (per V.Ramasubramanian, J.)

As against an Order-in-Original passed under Section 73 of the Finance Act, 1994 read with Section 111 of the Finance Act, 2013, the petitioner has come up with the above writ petition.

2. Heard Mr. B.Chandrasen Reddy, learned counsel for the petitioner.

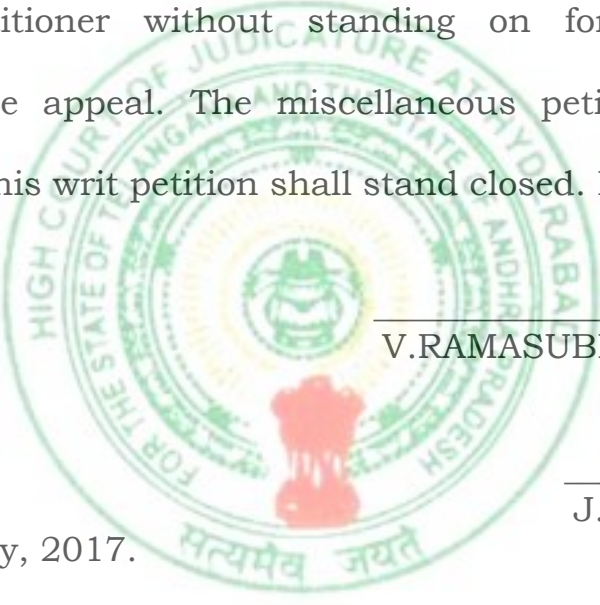
3. Mr. B.Narasimha Sarma, learned Senior Standing Counsel, takes notice for the respondents.

4. The petitioner admittedly has an alternative remedy of appeal to the CESTAT, under Section 86(1) of the Finance Act, 1994. But the petitioner seeks to bypass the alternative remedy of appeal on the ground that he made a declaration under a scheme known as VCES Scheme and that the same was rejected for non-compliance with the conditions prescribed for the scheme. According to the petitioner, after having rejected the application, the proceedings cannot be initiated under Section 73.

5. But the above contention can be as well raised by the petitioner before the CESTAT. The aforesaid contention, even if it is valid, does not strike at the very root of the jurisdiction of the Commissioner, to enable us to allow the petitioner to bypass the alternative remedy of appeal. Therefore, the

petitioner should go only before the CESTAT, without availing of which remedy, the petitioner cannot come up before us.

6. It appears that the impugned order dated 24-10-2016 was served on the petitioner on 19-11-2016. The period for filing an appeal would expire by 17-02-2017. However, the CESTAT has power to condone the delay up to 90 days. Therefore, while dismissing the writ petition, we make it clear that if the petitioner files an appeal within 4 (four) weeks, the CESTAT shall condone the delay on an application taken out by the petitioner without standing on formalities and entertain the appeal. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

16th February, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.5310 of 2017
(per VRS, J.)



16th February, 2017.
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