IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.27383 of 2018
and
WMP.No.31884 of 2018

M/s.Wittmann Battenfeld India Pvt. Ltd.,
Represented by its Director
No.1 & 2, Arumugam Nagar,
Chinna Porur, Chennai-600 116. ... Petitioner

Vs.

1.The Commissioner of Customs (Appeals-11)
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

2.The Deputy Commissioner of Customs
Special Valuation Branch
Customs House, No.60, Rajaji Salai
Chennai-600 001. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARI, to call for the records of the first respondent in the impugned order in Appeal C.Cus.II.No.271/2015 dated 25.03.2015 and quash the same, as there is violation of principles of natural justice as the petitioner has not been served with the order as provided for under Section 153 of the Customs Act, 1962.

For Petitioner : Mr.K.Vaitheeswaran
For Respondents : Mr.S.R.Sundar
Standing Counsel

O R D E R

Mr.S.R.Sundar, learned standing counsel takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed challenging the order of the first respondent dated 25.03.2015 in disposing the appeal filed by the Revenue against the order of the Adjudicating Authority dated 14.11.2014.

3. Heard both sides.

4. First of all, this writ petition filed against the order made by the First Appellate Authority on merits, cannot be entertained by this Court by exercising its discretionary jurisdiction under Article 226 of the Constitution of India, as admittedly, further appellate remedy is available to the petitioner before the Customs Excise and Service Tax Appellate Tribunal, the final fact finding authority. Secondly, the impugned order was passed as early as on 25.03.2015 and the petitioner is seeking to challenge the same before this Court after more than 3 years. The reason stated for doing so is that the said order of the Adjudicating Authority was not communicated to the petitioner in time. That alone cannot be a ground to entertain the writ petition, as the petitioner can very well file an appeal with a condone delay petition in filing such appeal, wherein, they can explain the reason, facts and circumstances, which warranted filing of the appeal with such delay. Needless to say that if any such application is filed, the Tribunal will consider the same and pass orders on such application in accordance with law. When such remedy is available to the petitioner, I do not think that this Court can entertain the present writ petition, more particularly, when the First Appellate Authority has passed the orders on merits and so the correctness or otherwise of the said order has to be canvassed only before the next fact finding authority viz., Customs Excise and Service Tax Appellate Tribunal.

5. Accordingly, without expressing any view on the merits of the matter, this writ petition is disposed of. However, it is open to the petitioner to file such an appeal with a condone delay petition before the Tribunal as stated supra. No costs. Connected miscellaneous petition is closed.
Mk

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Customs (Appeals-11)
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

2.The Deputy Commissioner of Customs
Special Valuation Branch
Customs House, No.60, Rajaji Salai, Chennai-600 001.

+1cc to Mr.S.R.Sundar, Advocate S.R.No.71749
+1cc to Mr.K.Vaitheeswaran, Advocate S.R.No.71791

KR/12/11