

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos. 27524, 27544, 27555, 27575, 27581, 27584, 27604, 27610,
27615 and 27620 of 2018

in

W.M.P.Nos. 32038, 32041, 32062, 32065, 32072, 32075, 32105,
32107, 32114, 32116, 32121, 32124, 32137, 32138, 32147, 32148,
32151, 32154, 32161, 32164 of 2018

M/s. Rane NSK Steering Systems (P) ltd,
Represented by Mr.V.Sethuraman,
aged 42 years,
No.14, Rajgopalan Salai,
Vallancherry Village,
Guduvancherry. 603 202.

..Petitioner in all the W.Ps

vs.

1. The Assistant Commissioner of Central Excise,
(Now The Assistant Commissioner of CT & CE),
Tambaram Division, Plot No.40, Ranga Colony,
Rajakilapakkam,
Chennai - 600073.

2. The Commissioner of Central Taxes and Central Excise
Chennai Outer Commissionerate,
Newry Towers, No. 2054,
I Block, II Avenue, 12th Main Road,
Anna Nagar, Chennai. 600040.

..Respondents in all the W.Ps

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order in Original No.31/2016, Original No.32/2016, Original No.33/2016, Original No.34/2016, Original No.35/2016, Original No.36/2016, Original No.37/2016, Original No.38/2016, Original No.39/2016, Original No.40/2016 dated 29.02.2016 (out of the common orders in Original No.31 to 40/2016 dated 29.02.2016) of the 1st respondent and quash the same to the extent of imposition of equal penalties imposed under Rule 15 of Cenvat Credit Rules 2004.

For Petitioner : Mr.G.Natarajan
(in all Wps)

For Respondents : Mr.S.R.Sundar
Standing Counsel
(in all Wps)

C O M M O N O R D E R

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

2. These writ petitions are filed challenging the common order in original Nos.31 to 40 of 2016 dated 29.02.2016 passed by the first respondent.

3. Heard the learned counsel for the petitioner and the learned standing counsel for the respondents and perused the materials placed before this Court in these writ petitions.

4. On a careful perusal of the facts and circumstances, this Court is not inclined to entertain these writ petitions for the following reasons:

(a) Admittedly, as against the very same impugned order in original, the petitioner has filed statutory appeals before the First Appellate Authority, however, with delay of 121 days. The Appellate Authority by common order dated 21.09.2016, dismissed the appeals as time barred and upheld the order of the Original Authority.

(b) Further the appeals were filed by the petitioner before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) challenging the order passed by the Appellate Authority. CESTAT by final order dated 29.06.2017, dismissed the appeals, however, without going further into the merits of the issues.

(c) Thereafter, the petitioner preferred further appeals before the Division Bench of this Court in CMA.Nos.1691 to 1700 of 2018 challenging the order of the CESTAT. The said appeals also came to be dismissed by the Division Bench of this Court on 07.08.2018.

(d) Therefore, it is evident that the order passed by the Original Authority got confirmed by the Appellate Authority upto this Court in the above CMA Nos.1691 to 1700 of 2018 as stated supra, by dismissing the appeal, though on the reason that it is time barred.

(e) There is no dispute to the fact that as against the said order passed by the Division Bench of this Court, the petitioner can move before the Apex Court, by filing appropriate proceedings. Admittedly, the petitioner did not choose to do so. On the other hand, the petitioner seeks to invoke the

jurisdiction of this Court under Article 226 of the Constitution of India to consider the correctness or otherwise of the common order passed by the Adjudicating Authority dated 29.02.2016.

5. No doubt, the learned counsel for the petitioner sought to rely upon two Full Bench decisions of the High Court, Hyderabad reported in 2018-TIOL-484-HC-AP-CX-LB and the High Court, Gujarat reported in 2015 (326) E.L.T. 532 (Guj.) and contend that these writ petitions can be entertained even in the above said circumstances.

6. I have perused the above decisions. The High Court of Telengana and Andhra Pradesh, has in fact, agreed with the the Full Bench decision of Gujarat High Court in PANOLI INTERMEDIATE (INDIA) PVT. LTD. case and observed that a writ petition would lie against an order in original, against which, an appeal was filed and dismissed as time barred or no appeal had been preferred, as it would have been time barred. First of all, it is to be noted at this juncture that in both those cases, the appeals were filed only upto the Tribunal therein and got dismissed as time barred. However, in the present case before this Court, admittedly further appeals were filed before the Division Bench of this Court as against the order of the Tribunal and that the same were dismissed by confirming the orders of the first and second appellate authorities. Apart from the above distinction of fact, I would like to emphasize that the view expressed by the above two full bench decisions of the High Courts holding that writ petition would lie against an order in original, even though the appeal was dismissed as time barred, is not a general rule in all cases and on the other hand, it is a qualified one applicable only under certain circumstances as stated below. The Gujarat High Court in PANOLI INTERMEDIATE (INDIA) PVT. LTD. case has observed at paragraph No.31 as follows:

"31....(A) The petition under Article 226 of the Constitution of India can be preferred for challenging the order passed by the original adjudicating authority in following circumstances that -

(A.1) The authority has passed the order without jurisdiction and by assuming jurisdiction which there exist none, or

(A.2) Has exercised the power in excess of the jurisdiction and by overstepping or crossing the limits of jurisdiction, or

(A.3) Has acted in flagrant disregard to law or rules or procedure or acted in violation of principles of natural justice where no procedure is specified."

7. Agreeing with the above view expressed by the Gujarat High Court, the Andhra Pradesh High Court in Electronic Corporation of India Limited case has observed at paragraphs 18, 21 and 22 as follows:

"18.We may also sum up by saying that the power is there even in aforesaid circumstances, but the exercise is discretionary which will be governed solely by the dictates of the judicial conscience enriched by judicial experience and practical wisdom of the judge.

...21.That being said, as rightly pointed out by Sri B.Narasimha Sarma, Sri M.V.J.K.Kumar and Sri Vinod Kumar Tadakamalla, learned counsel for the Revenue, entertainment of a writ petition against an Order-in-Original in circumstances such as are obtaining presently cannot be for the mere asking. The High Court would necessarily take note of the fact that the writ petitioner who seeks to assail the validity of such an Order-in-Original lost out on invocation of appellate remedies due to delay, intentionally or otherwise, and exercise its discretion judiciously on the facts of that individual case to decide as to whether challenge made by such a writ petitioner should be entertained. The length of the delay on the part of the petitioner in filing a writ petition may be one of the crucial factors that would weigh with the Court as it would not be open to a person aggrieved by an Order-in-Original to sleep over the same for years together and then seek to challenge it. Further, various other aspects on facts may also weigh upon the writ Court in deciding whether or not the writ petition should be entertained. Some of the parameters have already been indicated by the Full Bench of the Gujarat High Court in PANOLI INTERMEDIATE (INDIA) PVT. LTD. (supra) to the effect that this Court would be guided by the nature of the challenge, viz., that the authority had passed an order without jurisdiction or by assuming jurisdiction when there exists none or has exercised power in excess of jurisdiction or overstepping the limits of such jurisdiction or has acted in blatant disregard of the law or rules of procedure or in violation of the principles of natural justice where no such procedure is specified.

22. Ultimately, what would weigh with this Court is whether gross injustice would result from non-consideration of the challenge sought to be laid against the Order-in-Original. It is for the Court to decide, on the facts of each individual case, as to whether it should entertain the writ petition or not and this discretion cannot be shackled at this stage by laying down any straightjacket formula or conditions."

8. Thus, even going by the above decisions, the petitioner has to satisfy that their case would fall under any of the following category viz., the Adjudicating Authority lacks jurisdiction or acted in excess of jurisdiction or in violation of principles of natural justice. Perusal of the grounds raised in these writ petitions would show that the petitioner has not made out a case in challenging the order of original authority under anyone of the above circumstances and on the other hand, the challenge was on the merits of the order. Certainly, the allegation of the petitioner that the Adjudicating Authority has invoked wrong provision of law for imposing penalty, cannot be considered as an action without jurisdiction and on the other hand, it could be wrong quoting of provision by the Adjudicating Authority, so long as the said Authority is having competence to impose penalty. Therefore, in my considered view, the above two decisions are not applicable to the present case.

9. Even otherwise, when the Division Bench of this Court has already dismissed the appeals arising out of the order passed by the Adjudicating Authority, though on the ground of limitation, I am of the considered view the petitioner is not entitled to seek for entertaining these writ petitions, as a matter of right, as the jurisdiction vested on this Court under Article 226 of the Constitution of India, undoubtedly a discretionary one, not necessarily to be exercised, even assuming the petitioner has made out a case. It is not that the petitioner is remediless. On the other hand, as stated supra, it is always open to the petitioner to challenge the order passed by the Division Bench of this Court in CMA Nos.1691 to 1700 of 2018 before the Apex Court. Therefore, when such alternative remedy is available to the petitioner, these writ petitions under Article 226 of the Constitution of India cannot be entertained. Accordingly, all these writ petitions are dismissed as not maintainable. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vri

TO:

1. The Assistant Commissioner of Central Excise,
(Now The Assistant Commissioner of CT & CE),
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2. The Commissioner of Central Taxes and Central Excise
Chennai Outer Commissionerate,
Newry Towers, No. 2054,
I Block, II Avenue, 12th Main Road,
Anna Nagar, Chennai. 600040.

+10cc to Mr.S.R.Sundar, Advocate sr.nos.73668, 73669, 73667,
73666, 73665, 73664, 73663, 73662, 73661 and 73660

+10cc to Mr.Jaikumar, Advocate sr.no.73706

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rsv(co)
nr 16/11/2018