HON'BLE THE CHIEF JUSTICE THOTTATHIL B. RADHAKRISHNAN

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.39327 OF 2018

ORDER (ORAL): (Per Hon'ble The Chief Justice Thottathil B. Radhakrishnan)

The order impugned in this writ petition under Article 226 of the Constitution of India is an order confirming demand in terms of the Finance Act, 1994; hereinafter referred to as "the Act". As noted even on the face of the impugned order, an appeal is available to the writ petitioner under Section 86 (1) of the Act.

2. Learned counsel for the writ petitioner has attempted to point out that on the basis of the provisions as understood and interpreted by the Customs Excise and Service Tax Appellate Tribunal (CESTAT), which has been affirmed in the Apex Court, there is no ground to make any levy and thereby confirming the demand.

3. Hearing learned counsel for the petitioner, we see that the questions raised fundamentally revolve on the questions of facts which may have to be determined if the issues raised are to be answered. It is settled proposition in fiscal regime that prescribed appellate remedies are not to be permitted to be side-tracked to have writ petitions filed without following the due track of appellate jurisdictions. We do not find that there is any issue relatable to the jurisdiction of the officer which has such potency that this Court ought to entertain the writ petition *de hors* the statutory appellate remedy.

4. For this reason, the writ petition fails and is dismissed *in limini* without prejudice to the appellate remedy in accordance with law. No order as to costs.

As a sequel, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

November 2, 2018
MRR