$~25

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 641/2018 & CM No. CM APPL. 2786/2018

AUTOGAS INDIA ..... Petitioner

Through: Mr. Alok Yadav, Advocate

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Harish Kumar Garg & Ms. Puran Kumari, Advocates for respondent No.1

Mr. Sanjeev Narula, CGSC with Ms. Anumita Chandra, Advocate for respondent No.2

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **23.01.2018**

The Order-in-Original, dated 23.10.2017, passed by the Joint Commissioner of Customs (Preventive), is appealable.

This order is passed in the second round of litigation. The Order-in- Original, dated 15.1.2013, passed in the first round, had become subject-matter of an order dated 31.5.2013 passed by the Commissioner of Customs (Appeals), who had partly accepted the appeal and passed an order of remit on the question of limitation and applicability of the longer period of limitation. The Customs Excise and Service Tax Appellate Tribunal, New Delhi, however, had set aside the said order dated 31.5.2013, in view of the amendments made and remitted the matter to the adjudicating officer for fresh decision.

This is not a case of inherent lack of subject-matter jurisdiction. The adjudicating officer, in the Order-in-Original, may have invoked the longer period of limitation and this would be an issue required to be examined and gone into in the first appeal. Facts have to be examined. The second contention that there was delay in passing of the Order-in-Original is again an aspect which can be gone into and examined by the First Appellate Authority. It is not the case of the petitioner that there is a statutory time-limit and, therefore, the order is barred by limitation. The petitioner places reliance on administrative instructions.

Learned counsel for the petitioner submits that they had relied on a judgment of the Bombay Bench of the Tribunal, which has not been considered. The plea can be considered by the appellate forum while dealing with merits.

With the aforesaid observations and in view of the equally efficacious appellate remedy available to the petitioner, we are not inclined to exercise our discretion and entertain the present writ petition. The writ petition is dismissed as not entertained, without expressing any opinion on merits. Pending application would be treated as disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 23, 2018
tp