IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27918 of 2007
and
M.P.No.1 of 2007

KICM (MADRAS) Limited,
Mushroom Factory 100% EOU,
Kekkaty Road,
Yellanahalli Post-Ketti,
Nilgiris - 643 202. ...Petitioner

Vs

The Joint Commissioner of Central Excise,
Foulks Compound,
Anai Road,
Salem - 636 001. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in C.No.V/07/15/93/2004-Cx-Adj and to quash the order in original Sl. No.59/2005 (JC), dated 30.08.2005.

For Petitioner : Mrs.Vardinikarthik
For Respondent : Mr.T.Pramod Kumar Chopda
SPC

O R D E R

One of the main grounds raised in the present Writ Petition challenging the order in original is that the goods involved in the present case are not excisable goods and that the Respondent herein has misconstrued the provisions of the Central Excise Act, while passing the impugned order.

2. It is seen that, against the order in original which imposes penalty under Section 11 of the Central

Excise Act, the Petitioner has a remedy to file an appeal before the Commissioner of Customs and Central Excise, which the Petitioner had not availed of. Admittedly, the order in original was passed on 30.08.2005 and the Writ Petition has been filed only in the month of August 2007, after a delay of two years.

3. The grounds raised in the present Writ Petition are not available to the Petitioner for the purpose of evading the alternate remedy and invoking the provisions of Article 226 of the Constitution of India. The law is well settled to the effect that the remedy of filing a Writ Petition would be available in very limited cases like lack of jurisdiction or when the order is prima facie illegal or perverse.

4. In the instant case, the grounds raised by the Petitioner touches upon the facts of the case, which requires to be considered only by an appellate authority. As such, I do not find any infirmity in the order passed by the Respondent herein, insofar as these aspects are concerned.

5. Nevertheless, since the Petitioner herein has raised certain grounds stating that the goods are not excisable goods, in my view, the Petitioner could be granted liberty to raise such grounds by permitting them to file an appeal. Since much time lapsed after the Writ Petition has been filed and kept pending and also taking into account that the Petitioner had preferred this Writ Petition after almost three years, the interest of the Department also requires to be protected.

6. In the light of the above observations, the Petitioner is granted liberty to file an appeal against the order in original dated 30.08.2005, passed by the Respondent herein, within a period of 30 days from the date of receipt of a copy of this Order, on condition that the Petitioner deposits 50% of the demand towards excise duty, after adjusting any amount which the Petitioner would have earlier made in connection with the present impugned order.

7. On receipt of such appeal, if any, the appellate authority shall dispose of the same on its own merits and in accordance with law and pass appropriate orders, as expeditiously as possible. It is made clear that this Court has not expressed any of its views with regard to the merits of the case.

8. With the above observations, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nl/ebsi

To

The Joint Commissioner of Central Excise,
Foulks Compound, Anai Road,
Salem – 636 001.

+1cc to Mr.Pushpa Seetharaman , Advocate SR.No. 53632
+1cc to Mr.T.Pramod Kumar Chopda , Advocate SR.No. 52245

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A.SK(30/07/2019)