IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**

and

THE HONOURABLE MRS.JUSTICE **V. BHAVANI SUBBAROYAN**

W.A.387 of 2018

M/S.C.P.Aquaculture (India) Private Ltd.,
Chennai-600 067. .. Appellant

Vs

1.The Commissioner of Central Excise,
Chennai I Commissionerate,
Nungambakkam High Road,
Chennai.

2.The Deputy Commissioner of Central Excise,
'E' Division, Chennai I Commissionerate,
No.R-40/A-1, TNHB Building, 100 Feet Road,
Moggapair East,
Chennai-600 037. .. Respondents

Prayer:- Writ Appeal has been filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.1894 of 2017 dated 16.08.2017 and allow the prayer in the Writ Petition, W.P.No.1894 of 2017.

For Petitioner : Mr.K.Jayachandran

For Respondents : Mr.A.P.Srinivas

JUDGMENT

(Judgment of the Court was delivered by **V. BHAVANI SUBBAROYAN, J.)**

Challenge in the present Writ Appeal is against an order in W.P.No.1894 of 2017 dated 16.08.2017 wherein the learned Single Judge, disposed of the Writ Petition directing the petitioner to present an appeal before the Commissioner of Central Excise (Appeal), Chennai, within a period of 60 days from the date of receipt of a copy of the said order and on receipt of appeal, the Commissioner shall entertained the appeal without reference to the limitation and fix an earlier date for hearing, considering the fact that the duty has been remitted by the petitioner without prejudice to his rights in the year 1999. The learned Single Judge issued a direction to dispose of the appeal within a period of 30 days from the date of presentation, affording an opportunity of personal hearing to the appellant.

2. The brief facts of this case as stated in the affidavit filed in support of the Writ Petition, in which the appellant herein has sought for a writ of Certiorarified Mandamus to call for the records relating to the order in original No.202 of 2016 dated 04.11.2016 passed by the 2nd respondent herein and to quash the same as far as restricting the interest amount payable on delayed refund and further sought for direction to the 2nd respondent to pay amount of interest for the

delayed payment of refund at the prescribed rate, are that the appellant before this Court is engaged in manufacture of Shrimp feed and registered with Central Excise Department, as a manufacturer of Shrimp/Prawn feed, falling under Central Excise Tariff Heading No.2302 of I Schedule to Central Excise Tariff Act. The petitioner is a 100% EOU during from 1996-97 to 2002-03. For the manufacture and clearance of Shrimp feed during the period from August, 1996 to February, 1999 and for the period from March, 1999 to August, 1999, the appellant claimed NIL rate of Customs duty and concessional rate of duty respectively. However, the department negatived the claim, on the ground that the Shrimp feed was different from prawn feed and therefore, the appellant is not eligible for the benefits claimed. Thereafter, two show cause notices were issued for the period from August, 1996 to February, 1999 and March, 1999 to August, 1999 making the appellant liable to pay duty on the clearances of Shrimp feed. When such adjudication proceedings were pending, the appellant has paid a total sum of Rs.9,62,93,598/- towards the differential duty, alleged to be covered under the second show cause notice issued above.

3. It is further seen from the averments stated in the affidavit filed in support of the Writ Petition that an appeal seemed to have been filed by the department. On review by the Board, the Tribunal

by order dated 20.03.2007 seemed to have set aside the second show cause notice and remanded the same. The Commissioner of Central Excise in turn has passed an order dated 10.11.2008 confirming the demand. The appellant filed a further appeal before the Tribunal, which passed an order dated 27.12.2010. As against the said order of the Tribunal, the department filed Civil Appeal before the Hon'ble Supreme Court which was dismissed on 11.03.2014 thereby, bringing a finality to the order dated 27.12.2010.

4. Therefore, the appellant filed an application seeking refund of the amount paid for September, 1999 to February, 2002, claiming a total amount of Rs.9,62,93,597/-. The Assistant Commissioner of Central Excise, sanctioned the above sum by an order in Original No.22/2015 (RT) dated 16.01.2015. Thereafter, the appellant has filed another application dated 31.03.2015 claiming an amount of Rs.3,32,21,291/- towards interest at 9% for the delayed refund, on the ground that the refund claim submitted on 03.03.2011 was not processed and sanctioned within 90 days as stipulated under the Act. For the application filed, the appellant was served with an order dated 04.11.2016, passed by the 2nd respondent, rejecting the request for payment of interest for the period of 3 years and 10 months and interest at 9%, as claimed by the appellant, but sanctioned a meager sum of Rs.6,48,992/- by admitting only 41 days of delay.

5. This order was challenged by the appellant in W.P.No.1894 of 2017. There being an efficacious alternative remedy without going into the merits of the case thereby confining only to the issue of alternative remedy, and holding the factual aspects cannot be gone under the Article 226 of the Constitution of India, the learned Single Judge by order dated 16.08.2017 disposed of the Writ Petition, directing the appellant herein to present an appeal before the Commissioner of Central Excise (Appeals) Chennai. Against the said order, the present Writ Appeal has been filed.

6. Mr.K.Jayachandran, learned counsel appearing for the appellant would vehemently contend that the learned Single Judge ought to have considered that the order passed by the 2nd respondent is per se illegal, as the 2nd respondent has accepted the delay on their part in processing the refund application. However the respondents had confined the delay only for 41 days, which is not correct and that the said aspect has not been considered by the learned Single Judge, while disposing of the Writ Petition. The learned counsel for the appellant would also contend that though an alternative remedy is available, when there is a blatant error on the face of the order, this Court has every jurisdiction to interfere with the same under Article 226 of the Constitution of India, which is an appropriate remedy to the appellant.

7. Per contra, Mr.A.P.Srinivas, learned Senior Standing counsel appearing for the department contended that the impugned order before the learned Single Judge was purely based on factual matrix and the disputed question of the number of days. He argued that the appellant did not furnish the original copies of the TR 6 Challans, but furnished only Xerox copies, at the time of filing the refund claim on 02.03.2011, and the appellant submitted all the Challans numbering 114 only on 09.09.2014, after which, the refund claim was processed. Taking 90 days from 09.09.2014 the claim of refund commenced only from 09.12.2014, and that the 2nd respondent has calculated 41 days delay, which is exactly the number of days delay, for which, the appellant is entitled to interest on refund. For the aforesaid reasons prayed to confirm the order of the learned Single Judge.

8. Heard, the learned counsel for the appellant and respondents and perused the materials on record.

9. Perusal of the impugned order in the Writ Petition dated 04.11.2016 and the order passed by the learned Single Judge in W.P.No.1894 of 2017 dated 16.08.2017. The appellant has claimed interest on delayed refund of Rs.3,32,21,291/-, at the rate of 9% per annum. Before the 2nd respondent, on 31.03.2015, the appellant has filed an application for interest on delayed refund with a working sheet, for Interest Claim in Schedule-B, which reads thus:-

<u>"Schedule:- B</u>

<u>Working Sheet for Interest Claim</u>

- Refund Application Filled on :- 02.03.2011
- Expiry Period Ended on :- 02.06.2011 After 90 days period
- Refund Settled Rs.9,62,93,597 :- Settled on 19.01.2015
- Interest Claim Amount :- Rs.3,32,21,291
- Rate of Interest @ 9% Per Year
- Rs.9,62,93,597 * 9% Per Year=Rs.86,66,424–Payable Interest
- Annual Interest / Per Month Interest
- Rs.86,66,424 / 12 Months = Rs.7,22,202/- Monthly Interest
- Per day Interest Rs.24,073/-
- Interest for a Month Rs.7,22,202/-
- Date of Claim Filed 02.03.2011 * Acknowledgment Copy Attached
- <u>Delayed Period Three Years Interest Rs.3,31,22,362/-</u>
- <u>02.06.2011 to 31.03.2012 & =10 Months</u>
- 01.04.2012 to 31.03.2013
- 01.04.2013 to 31.03.2014
- <u>01.04.2014 to 31.03.2015 = 3 Years</u>
- Date of Claim Settled 19.01.2015
- Period of Delay 3 Years & 10 Month
- Period 02.06.2011 to 31.03.2015

- TOTAL INTEREST PAYABLE : Rs.3,32,21,291/- @ 9% Interest P/Y
- Interest Recovery Claim Filed on 02.04.2015"

Whereas the 2nd respondent while adjudicating the application filed for interest on refund claim has categorically disputed the date on which the Challans were filed for refund.

> *"15. On verification of documents enclosed to the refund claim, it was found that M/s.CPA did not furnish the original copies of TR6 Challans but furnished only xerox copies at the time of filing refund claim on 02.03.2011. M/s.CPA has submitted 114 numbers of Challans to Chennai V Division only on 09.09.2014 after which the refund claim was processed."*

10. Perusal of the above said facts, it is clear that the contesting parties, appellant as well as the department, have submitted details of the claim made, and there is a dispute regarding the date of submission of TR Challans. Disputed factual aspects cannot be decided in a Writ Petition, especially to verify the dates of submission of 114 Challans. When there is an alternative remedy, there cannot be any justification in approaching the Writ Court under Article 226 of the Constitution of India. It is well settled law that existence of an alternative remedy is a bar in invoking the jurisdiction of this Court

under Article 226 of the Constitution of India, except in exceptional cases, which on the facts of this case, is not. It would be appropriate to consider as held by the Hon'ble Supreme Court in various decisions.

11. In a decision reported in "**2005 (5) Supreme 161 (State of Himachal Pradesh and others .vs. Gujarat Ambuja Cement Limited and another"),** in paragraph 19, the Hon'ble Supreme Court held as follows:-

> *"We shall first deal with the plea of regarding alternative remedy as raised by the appellant State except for a period when an Article 226 was amended by the Constitution (42nd Amendment Act, 1976). The power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy convenience and desertion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of desertion of the High Court to grant relief under Article 226 of the Constitution of India. At the same time, it cannot be lost sight though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case. Normally, the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing an alternative remedy available, the High Court should*

ensure that the petitioner has made out a strong case or there exist good grounds to invoke the extraordinary jurisdiction."

12. Appellant is directed to file an appeal before the Commissioner of Central Excise (Appeals) Chennai, within a period of 30 days from the date of receipt of copy of this Judgement. On receipt of the Judgement, the Commissioner shall hear the same and dispose of the same in accordance with law, after affording a reasonable opportunity of being heard in person within a period of 60 days thereafter.

13. Accordingly, the Writ Appeal stands dismissed. As there is no valid grounds to invoke the extraordinary jurisdiction. No costs.

(S.M.K.J) (V.B.S.J)

07.01.2019

vji/nsd

Index:Yes/ No
Internet: Yes/No
Speaking/non-speaking

To

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