IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 11124 and 11125 of 2016
and
W.M.P. Nos. 9665 and 9666 of 2016

M/s. FLSmidth Private Limited,
Represented by its Director,
FLSmidth House,
No. 34, Egatoor, Kelambakkam,
Chennai - 600 103. ... Petitioner
(in both WPs)

-vs-

The Assistant Commissioner (CT)
Valluvar Kottam Assessment Circle,
No. 10, Palaniyappa Maligai,
Greams Road,
Chennai - 600 006. ... Respondent
(in both WPs)

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in the impugned orders in CST/773780/2007-08 and CST/773780/2008-09 dated 01.03.2016 and quash the same as it is in violation of Section 5(2) and Section 6(2) of the Central Sales Tax Act, 1956 and violative of Article 286(1)(b) of the Constitution.

For Petitioner : Mr. V.S.Manoj
(in both WPs)

For Respondent : Mr. A.N.R.Jayaprathab
Government Advocate (Taxes)
(in both WPs)

C O M M O N O R D E R
(through video conference)

Heard Mr. V.S.Manoj, Learned Counsel for the Petitioner and Mr. A.N.R.Jayaprathap, Learned Government Advocate (Taxes) for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petitions challenge the orders in CST/773780/2007-08 and CST/773780/2008-09 dated 01.03.2016 passed by Respondent re-determining the tax liability of the Petitioner under the provisions of Central Sales Tax Act, 1956 (hereinafter referred to as the 'Act' for short). The Petitioner was entitled to prefer statutory appeal against that order within a period of 30 days from the date of its receipt before the Appellate Authority, viz., Appellate Deputy Commissioner (CT), Chennai (Central), Chennai - 600 006, as mentioned therein. However, the Petitioner did not prefer any such appeal before that Appellate Authority, but has instead filed these Writ Petitions on 23.03.2016 challenging the order passed by the Respondent.

3. There is no acceptable explanation from the Petitioner for not having resorted to that alternative remedy provided under the statute. In this context, it must be recapitulated here that the Hon'ble Supreme Court of India in Assistant Collector of Central Excise -vs- Dunlop India Limited [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction as follows:-

> "3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

Having regard to that legal position, this Court does not express any view on the correctness or otherwise on the merits of the controversy involved in the matter.

4. In the result, the Writ Petitions, which cannot be entertained, are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Valluvar Kottam Assessment Circle,
No. 10, Palaniyappa Maligai,
Greams Road,
Chennai - 600 006.

+1cc to M/s.K.Vaitheeswaran, Advocate Sr.35955
+1cc to the Special Government Pleader Sr.36175

W.P. Nos. 11124 and 11125 of 2016

sj[co]
srg 19/11/2020