IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.Nos.516, 517 and 525 of 2020
and CMP 7520/2020,CMP 7637/2020, CMP 7522/2020

K.Ramachandran ... Appellant in WA.No.516/2020

K.Narayanan ... Appellant in WA.No.517/2020

M/s.Govardhan Spinners Ltd.,
rep. By its Director,
K.Narayanan,
reg. Office at
D.No.4, Kannammal Street,
Saligramam,
Chennai 600 093,
Now at D.No.24 (Plot No.60),
Venkatesa Nagar, Extension 1,
2nd Street, Virugambakkam,
Chennai 600 092 ... Appellant in W.A.No.525 of 2020

Versus

The Commissioner of Central Excise
Central Revenue Building,
Beebikulam, Madurai 625002. ... respondent

Praycr:- Writ Appeals filed under Clause 15 of the Letters Patent against the order made in WP.Nos.23987/2004, 23986/2004 and 23985 of 2004 dated 13.08.2019.

For appellants : Mr.C.Manishankar, Senior counsel
for Mr.T.Shanmugam

For respondent : Mr.Pramod Kumar Chopda

COMMON JUDGMENT

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2. These appeals have been preferred by the Assessee against the order of the learned single Judge dated 13.08.2019 in WP.Nos.23987/2004, 23986/2004 and 23985 of 2004, in which the petitioner, inter alia, challenged the order dated 29.6.2004 in the Original No.2/2004 passed by the learned Commissioner of the Central Excise, Madurai.

3. The main ground of attack before the learned single Judge was not granting an opportunity to cross examine 50 witnesses whom the appellant/assessee intended to cross examine during the course of assessment proceedings before the learned Commissioner.

4. This ground is however not found favour with the learned single Judge, who was of the opinion that since the petitioner/assessee has an effective alternative remedy before the learned CESTAT (in short “Tribunal”),

the Assessee should avail the alternative remedy before the Tribunal and therefore, the learned single Judge was pleased to grant a period of three months time from the date of receipt of that order.

5. Instead of approaching the learned Tribunal, the Assessee has approached this Court by way of the present intra court appeals.

6. The learned counsel for the appellant/Assessee reiterated the same submissions as done before the learned single Judge. However, the same were controverted by the learned counsel for the Revenue, Mr.Pramod Kumar Chopda, who submitted that sufficient opportunities were given to the Assessee, but somehow the Assessee delayed the proceedings just by asking opportunity after opportunity under the garb of cross examining the witnesses before the Assessing Authority. Therefore, he submitted that there was no breach of natural justice in the present case.

7. Having heard the learned counsel for the parties, we are of the clear opinion that since the learned single Judge has only relegated the appellant to the effective alternative remedy, and in our opinion rightly so, we are inclined to examine the details of the merits of the contentions raised by the learned counsel for the Assessee as to whether opportunity to cross examine

the witnesses was required to be given in the present case or not or whether sufficient opportunity was already given to the Assessee or not. We cannot appreciate short circuiting the normal procedure of appellate forums to be availed by the Assessee in such cases. Merely because there has been an alleged breach of principles of natural justice, the Assessee is not allowed to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and the learned Single Judge therefore, in our opinion, was perfectly justified in relegating the appellant back to the alternative remedy.

8. The Tribunal being the final fact finding body, is expected to look into all the aspects of the matter, including the aspect raised before the learned Single Judge about the cross examination of the witnesses. Whether the Assessee was given sufficient opportunity or not whether such cross examining was necessary at all or not, are all aspects which the Tribunal can very well consider in the appeal, if any filed by the Assessee.

9. The only limited relief we can grant to the Assessee even now is further period of four weeks, to file an appeal before the Tribunal. If the Assessee is inclined to file such appeal, we request the learned Tribunal not to raise objection as to limitation of filing the appeal, but however, subject to

fulfillment of other usual conditions for filing the appeal, the appeal may be entertained and decided in accordance with law, as expeditiously as possible since the matter pertains to the year 2004.

10. With these observation, the writ appeals are disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are also closed.

(V.K.,J.) (K.R.,J.)
27.07.2020

kpl/tar

To

The Commissioner of Central Excise
Central Revenue Building,
Beebikulam, Madurai 625002.

DR.VINEET KOTHARI, J.
and

KRISHNAN RAMASAMY, J.

(tar)

W.A.Nos.516, 517 and 525 of 2020

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