

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2020

CORAM

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

W.P. No. 14756 of 2016
and
W.M.P. No. 12889 of 2016

1. M/s. Fourceess Diamonds Pvt Ltd.,
Represented by its Managing Director,
Shri Manmohan,
Golden Complex, Old No. 128, New No. 220,
N S C Bose Road,
Sowcarpet, Chennai - 600079.

2. Shri Manmohan,
Managing Director,
M/s. Fourceess Diamonds Pvt Ltd.,
Heera Panna Apartment, 5th Floor,
128, GN Chetty Road,
Chennai - 600017.

... Petitioners

-vs-

The Joint Commissioner of Customs (Air Cargo)
Office of the Principal Commissioner of Customs,
Chennai VII Commissionerate,
New Custom House, Meenambakkam,
Chennai - 600 027.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent herein culminated in Order in Original No. 132/2016 (ACC) dated 22.02.2016 and quash the same.

For Petitioners: Mr. Akhil R Bhansali
For Respondent : Mr. A.P.Srinivas
Senior Standing Counsel

O R D E R
(through video conference)

Heard Mr. Akhil R Bhansali, Learned Counsel for the Petitioner and Mr. A.P.Srinivas, Learned Senior Standing Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by Order in Original No.132/2016 (ACC) dated 22.02.2016 had demanded differential duty with interest and penalty for import of goods made by the Petitioner under Section 28 of the Customs Act, 1962 (hereinafter referred to as the 'Act' for short). The Petitioner was entitled to prefer appeal against that order under Section 128 of the Act, within a period of 60 days from the date of its receipt before the Appellate Authority, viz., Commissioner of Customs, (Appeals), Chennai - 600 016, who has been empowered to condone delay in filing such appeal for an extended period of 30 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before that Appellate Authority, but has instead filed this Writ Petition on 11.04.2016 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 has to 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 Article 226 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 Petition, which cannot be entertained, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Joint Commissioner of Customs (Air Cargo)
Office of the Principal Commissioner of Customs,
Chennai VII Commissionerate,
New Custom House, Meenambakkam,
Chennai - 600 027.

+1 CC to Mr. Akhil R Bhansali, Advocate sr 33419.

W.P. No. 14756 of 2016

SRA(CO)
SP(03/11/2020)