IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2020

CORAM

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

W.P. Nos. 5335 to 5337 of 2018

M.Kannan ... Petitioner in W.P. No. 5335 of 2018

B.Karthik ... Petitioner in W.P. No. 5336 of 2018

R.Sourirajan ... Petitioner in W.P. No. 5337 of 2018

-vs-

The Principal Commissioner of Customs,
Chennai VII Commissionerate,
New Customs House,
Meenambakkam,
Chennai - 600 027. ... Respondent in all W.P.s

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 comprised in Order in Original No. 373/2016-AIR dated 20.05.2016 passed by the Respondent herein and to quash the same.

For Petitioners: Mr. Sairam for Mr.S.Baskaran (in all W.P.s)

For Respondent : Mr. A.P.Srinivas, Standing Counsel (in all W.P.s)

C O M M O N O R D E R

(through video conference)

Heard Mr. Sairam, Learned Counsel appearing for the Petitioners and Mr. A.P.Srinivas, Learned Standing Counsel appearing 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. 373/2016-AIR dated 20.05.2016 had imposed penalty on the Petitioners under Section

112(a) of the Customs Act, 1962 (hereinafter referred to as 'the Act' for short). The Petitioners are entitled to prefer appeal against that order under Section 129-A of the Act, within a period of three months from the date of its receipt before the Customs, Excise and Service Tax Appellate Tribunal at Shastri Bhavan, Haddows Road, Chennai-600 006 (hereinafter referred to as the "CESTAT" for short), who has been empowered to condone delay in filing such appeal, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioners did not prefer any such appeal before that Appellate Authority, but have instead filed these Writ Petitions on 26.08.2016 challenging the order passed by the Respondent.

3. There is no acceptable explanation from the Petitioners 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 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. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Principal Commissioner of Customs,
Chennai VII Commissionerate,
New Customs House,
Meenambakkam,
Chennai - 600 027.

+1cc to Mr.A.P.Srinivas, Advocate Sr.35007

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srg 11/11/2020