

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2020

CORAM

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

W.P.NO.3763 OF 2013

AND

M.P.NOS.1 AND 2 OF 2013

M/s.SIEMENS GAMESA RENEWABLE Power  
Private Limited, Rep. by S.Ramachandran  
Head Fiscal, No. 489, G.N.T. Road,  
Thandalkazhani, Vadagarai Post,  
Redhills, Chennai 600 052.  
(Cause Title Amended Vide Order DT: 31.08.2020  
made in WMP. 13726/2020 in WP. 3763/2013)

... Petitioner

-vs-

1. The Union of India  
Rep. by the Revenue Secretary  
Department of Revenue, North Block,  
New Delhi - 110 001.
2. The Commissioner of Customs (Seaport-Import)  
Customs House, No. 60 Rajaji Salai,  
Chennai - 600 001.

... Respondents

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 2<sup>nd</sup> Respondent vide the Impugned Order-in-Original No.19752/2012 dated 16.11.2012 and quash the same.

For Petitioner : Mr.N.Muralikumaran  
for M/s.Mcgan Law Firm

For Respondent : Mr.S.Thirumavalavan (For R1)  
(Central Government Standing Counsel)

Mrs.Hema Muralikrishnan (For R2)  
Standing Counsel

O R D E R  
(through video conference)

Heard Mr.N.Muralikumaran, Learned Counsel for the Petitioner, Mr.S.Thirumavalavan, Learned Central Government Standing Counsel for the First Respondent and Mrs.Hema Muralikrishnan, Learned Standing Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by Order-in-Original No.19752 of 2012, dated 16.12.2012 had passed an order relating to the classification of goods imported by the Petitioner and demanded the differential duty under Section 28 of the Customs Act, 1962 (hereinafter referred to as the 'Act' for short). The said order itself specifically mentions that the Petitioner is entitled to prefer appeal against that order under Section 129A of the Act, if it is aggrieved within a period of three months from the date of its communication 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 the 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 13.02.2013 challenging the order passed by the Second 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 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 factual controversies involved in the matter.

4. Learned Counsel for the Petitioner contends that since the Writ Petition has been pending from the year 2013 and interim order has been in force since 15.02.2013, the exercise of alternative remedy may not be considered as the bar to entertain the Writ Petition at this stage and the matter may be decided on merits. In this regard, it would be appropriate to refer the dictum laid down by the Hon'ble Supreme Court of India in the State of Uttar Pradesh -vs- Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti [(2008) 12 SCC 675] in which it has been held that it cannot be laid down as a proposition of law that once a Writ Petition is admitted, it cannot be dismissed on the ground of alternative remedy.

5. In the result, the Writ Petition, which cannot be entertained, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Msm

To

1. The Union of India

Rep. by the Revenue Secretary

Department of Revenue, North Block, New Delhi - 110 001.

2. The Commissioner of Customs (Seaport-Import)

Customs House, No. 60 Rajaji Salai, Chennai - 600 001.

+1cc to M/s.Mcgan Law Firm, Advocate, S.R.No.33486

W.P.No.3763 of 2013

SRA(CO)

CS/04/11/2020