IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM

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

W.P.NO.5499 OF 2013
AND
M.P.NOS.1 AND 2 OF 2013

Stalin Joseph ... Petitioner

-vs-

The Commissioner of Customs (Airport),
New Customs House, Air Cargo Complex,
Meenambakkam, Chennai - 600 027. ... Respondent

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarifed Mandamus, calling for the records made in Order No. 640 of 2012 dated 30.11.2012 on the file of the Respondent herein and quash the same as illegal and direct the Respondent to conduct fair enquiry after furnishing the relevant documents and after subjecting the investigating team under cross examination.

For Petitioner : Mr.Karthik Seshadri

For Respondent : Mr.V.Sundareswaran,
Standing Counsel

O R D E R
(through video conference)

Heard Mr.Karthik Seshadri, Learned Counsel for the Petitioner and Mr.V.Sundareswaran, Learned Standing Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order in Original No. 640 of 2012 dated 30.11.2012 passed by the Respondent determining the liability of the Petitioner for the year 2010-2011 under the provisions 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 129-A of the Act, within a period of 3 months from the date of its receipt before the Customs, Excise and Service Tax Appellate Tribunal, 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 Petitioner did not prefer any such appeal before that Appellate Authority, but has instead filed this Writ Petition on 25.02.2013 challenging the order passed by the Respondent.

3. It must, at once, be emphasized 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, in the following words:-

> "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 by-pass 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."

There is no acceptable explanation from the Petitioner for not having resorted to that alternative remedy provided under the statute. It is also not the case of the Petitioner that the contentions raised in this Writ Petition could not be agitated in the appeal before the Appellate Authority.

4. Viewed from that perspective, this Court is not inclined to delve into the merits of the controversy involved in this case, touching upon disputed questions of fact for effectual and complete adjudication of the matter.

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

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vjt/dm

To

The Commissioner of Customs (Airport),
New Customs House, Air Cargo Complex,
Meenambakkam, Chennai - 600 027.

W.P.No.5499 of 2013

AJS(CO)
CS/14/12/2020