IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2020

CORAM

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

W.P. No. 11650 of 2018
and
W.M.P. No. 13638 of 2018
and
W.M.P. No. 10782 of 2019

M/s.Seven Seas Distilleries Pvt Ltd.,
Represented by K.Prakash, Director
'Kences Enclave', V Block, VII Floor,
No. 1, Ramakrishna Street,
T.Nagar, Chennai - 600 017. ... Petitioner

-vs-

The Principal Commissioner of GST & Central Excise
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the Respondent in the impugned Order-in-Original No.22/2018 CH.N.GST (Commissioner) dated 31.01.2018, quash the same as ultra vires, Article 226 of the Constitution of India read with Entry 51 and 54 of List II of Schedule VII and Article 14 of the Constitution of India as alcoholic liquor for human consumption is considered as goods by State law and liable to levy of Sales Tax / Value Added Tax by State Governments.

For Petitioner : Mrs. Radhika Chandrasekhar

For Respondent : Mrs. Hema Muralikrishnan
Standing Counsel

O R D E R
(through video conference)

Heard Mrs. Radhika Chandrasekhar, Learned Counsel for the Petitioner and Mrs. Hema Muralikrishnan, Learned 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.22/2018 CH.N.GST. (Principal Commissioner), dated 31.01.2018 had assessed the liability of the Petitioner to pay Service Tax on the contract manufacture of IMFL for the period from April 2011 to June 2012 and for the period from June 2015 to March 2016 at Rs.38,12,14,991/- under Section 73(2) of the Finance Act, 1994 (hereinafter referred to as the 'Act' for short) along with interest as per Section 75 of the Act, and penalty under Section 78 of the Act. The Petitioner was entitled to prefer appeal against that order under Section 86 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 Petitioner did not prefer any such appeal before that Appellate Authority, but has instead filed this Writ Petition on 02.05.2018 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 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 Petition, which cannot be entertained, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

Msm

To

The Principal Commissioner of GST & Central Excise
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+1cc to Mr.Hema Muralikrishnan, Advocate SR.No.34092

+1cc to Mr.K.Vaitheeswaran, Advocate SR.No.33801

W.P. No. 11650 of 2018

SRA(CO)
GMY(04/11/2020)