IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.11.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 2622 of 2018
and
M.P. No. 3247 of 2018

Firm Foundations,
Represented by Mr.R.Sarvendran,
Vice President,
No. 93, Q Block, 4th Main Road,
Anna Nagar,
Chennai-600 040.
... Petitioner

-vs-

Additional Commissioner,
Office of the Commissioner of GST & Central Excise,
Audit-I Commissionerate,
No. 1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension,
Chennai - 600 101.
... 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 Order in Original No. 08/2017-2018 Audit-1 dated 30.11.2017 in C.No.IV/9/41/2016-ST1 Adj issued by the Respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr. Joseph Prabhakar
For Respondent : Mr. S.R.Sundar

O R D E R
(through video conference)

Heard Mr. Joseph Prabhakar, Learned Counsel for the Petitioner and Mr. S.R.Sundar, Learned 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. 08/2017/2018 - Audit - 1 dated 30.11.2017 had passed an order under the provisions 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 128 of the Act, if it is aggrieved within a period of sixty days from the date of its communication before the Commissioner (Appeals), who has been empowered to condone delay in filing such appeal for an

extended period of 30 days, 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 02.02.2018 challenging that 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. Learned Counsel for the Petitioner contends that since the Writ Petition has been pending from the year 2018 and interim order has been in force since 07.03.2018, 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. 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.

6. 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

To

1.Additional Commissioner,
Office of the Commissioner of GST & Central Excise,
Audit-I Commissionerate,
No. 1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension,
Chennai - 600 101.

+1cc to Mr.S.R.Sundar, Advocate, S.R.No.37824

W.P. No. 2622 of 2018

BP(CO)
GSP(18/12/2020)