

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

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

W.P. No. 18428 of 2018
and
W.M.P. No. 21748 of 2018

Gita Power & Infrastructure Pvt. Ltd.,
Represented by Mr. S.Kamban, Director,
Knowledge Towers, New No. 36, 4th Floor,
Sanjeevarayanpettai, Little Mount,
Chennai - 600 015.

...Petitioner

-vs-

Commissioner of GST and Central Excise,
Office of the Commissioner of GST and Central Excise,
Chennai South,
No. 692, MHU Complex, 5th Floor,
Anna Salai, Nandanam,
Chennai - 600 035.

...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the Respondent in proceedings Order in Original No. 04/2018 dated 26.02.2018 in C. No. V/15/54/2018-CS Adj and quash the same as arbitrary and illegal.

For Petitioner : Mr. Joseph Prabakar

For Respondent : Mr. M.Santhanaraman, Standing Counsel

O R D E R
(through video conference)

Heard Mr. Jospeh Prabakar, Learned Counsel for the Petitioner and Mr. M.Santhanaraman, 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. 04/2018 dated 26.02.2018 had passed an order under the provisions of the Finance Act, 1994 (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 129-A of the Act, if it is aggrieved within a period of three months from the date of its communication before the Appellate Tribunal, 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 17.07.2018 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 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 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

vjt

To

Commissioner of GST and Central Excise,
Office of the Commissioner of GST and Central Excise,
Chennai South,
No. 692, MHU Complex, 5th Floor,
Anna Salai, Nandanam,
Chennai - 600 035.

Copy to

Gita Power & Infrastructure Pvt. Ltd.,
Represented by Mr. S.Kamban, Director,
Knowledge Towers, New No. 36, 4th Floor,
Sanjeevarayanpettai, Little Mount,
Chennai - 600 015.

W.P. No. 18428 of 2018

SRA (CO)
KKV/11/12/2020