IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

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

W.P. No. 5454 of 2017
and
W.M.P. Nos. 5781 and 5782 of 2017

Bonfiglioli Transmissions Private Limited,
Represented by its Head Commercial, Mr. T.K.Ravi,
Plot No. AC7-AC 11, Sidco Industrial Estate,
Chennai - 600 044. ... Petitioner

-vs-

1. The Commissioner of Central Excise (Appeals-II),
26/1, Nungambakkam High Road,
Chennai - 600 034.

2. The Additional Commissioner of Central Excise,
Chennai - IV Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam,
Chennai - 600 035.

3. The Commissioner of Central Excise,
Chennai - IV Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam,
Chennai - 600 035. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in Order in Appeal No. 19/2014 (M-IV) dated 10.11.2014 passed by the First Respondent in Appeal No. 89/2013 (M-IV) dated 19.12.2013 and quash the same as arbitrary and illegal.

For Petitioner : Mr. Joseph Prabakar

For Respondents: Mr. S.Rajasekar, Standing Counsel

O R D E R
(through video conference)

Heard Mr. Joseph Prabakar, Learned Counsel for the Petitioner and Mr. S.Rajasekar, Learned Standing Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by Order-in-Original No. 19/2014(M-IV) dated 10.11.2014 had passed an order determining the liability under the provisions of the Central Excise Act, 1944 (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 35-B 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 01.03.2017 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 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.

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-III)

//True Copy//

Sub Assistant Registrar

vjt

To

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   26/1, Nungambakkam High Road,
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MJB(CO)
CB(08/12/2020)