

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.11.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 3669 of 2017

Shri Sanjay Thanvi
Erstwhile Proprietor
M/s. Hoewitzer Organic Chemical Co.
No.19, First Cross Street, V.O.C. Nagar
Anna Nagar East, Chennai - 600 102. ... Petitioner

-vs-

The Principal Commissioner of Customs
Chennai VII Commissionerate
New Custom House
Meenambakkam, Chennai - 600 027. ... 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 comprised in Order in Original No. 615/2016-AIR dated 29.06.2016 passed by the respondent herein and to quash the same.

For Petitioner : No appearance

For Respondent : Mr. V.Sundareswaran
Standing Counsel

ORDER
(through video conference)

There is no representation for the Petitioner when the matter is called at 1.00 p.m.

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

3. The Respondent by Order-in-Original No.615/2016-AIR, dated 29.06.2016 had passed an order for confiscating goods 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 129-A of the Act, if it

is aggrieved within a period of three months from the date of its communication 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 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 26.10.2016 challenging the order passed by the Respondent.

4. 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.

In the result, the Writ Petition, which cannot be entertained, is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

may a

To

The Principal Commissioner of Customs
Chennai VII Commissionerate
New Custom House
Meenambakkam, Chennai - 600 027.

Copy to

Shri Sanjay Thanvi
Erstwhile Proprietor
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Anna Nagar East, Chennai - 600 102.

+1 cc to Mr.V.Sundareeswaran Advocate sr37693

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