

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

CORAM

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

W.P. No. 33419 of 2018

and

W.M.P. No. 38787 of 2018

ITC Limited
Virginia House
No.37, Jawaharlal Nehru Road
Kolkatta - 700 071. ... Petitioner

Vs.

Commissioner of Customs
Chennai -IV Commissionerate
Customs House
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 of the Respondent culminating in Order in Original No.65516/2018 dated 28.09.2018 (issued on 08.10.2018) to the extent that it confirms the Customs duty demand of Rs.34,70,06,234/-, along with interest, orders recovery thereof, orders confiscation u/s. 111(o) and levies penalty u/s 112(a) of the Act, and quash the same.

For Petitioner : Mrs. L.Maithili
For Respondent : Mr. S.Rajasekar

सत्यमेव जयते
O R D E R

(through video conference)

Heard Mrs. L.Maithili, Learned Counsel for the Petitioner and Mr. S.Rajasekar, Learned 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.65516/2018 dated 28.09.2018 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 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 (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 10.12.2018 challenging the order passed by the Respondent.

3. 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."

There is no acceptable explanation from the Petitioner for not having resorted to that alternative remedy provided under the statute.

4. When the aforesaid legal position was pointed out, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition with liberty to resort to that procedure. She has also filed a memo dated 04.12.2020 to that effect, which reads as follows:-

"1. The impugned order dated 08.10.2018 was served on the Petitioner on 10.10.2018. The Petitioner filed Writ Petition on 10.12.2018. The statutory time-limit for filing appeal before the

CESTAT is 3 months from the date of communication of the order.

2. The Appellate remedy is available before the CESTAT in the present case subject to making a Pre-deposit of Rs.2,60,25,467.55 (being 7.5% of the demand of Rs.34,70,06,234/- confirmed by the impugned order) in terms of Section 129E of the Customs Act 1962. The Bond for Rs.40 Crores executed having been enforced by the impugned order recovering the entire duty amount of Rs.34,70,06,234/-, and therefore not discharged, the CESTAT may treat this recovery as pre-deposit for the purpose of taking the appeal on record. On an application by the Petitioner seeking waiver of pre-deposit, the CESTAT may be directed to take into account the Bond of Rs.40 Crores, (which is about 20 times the pre-deposit amount) for the purpose of entertaining the appeal."

5. This Court, without expressing any view on the correctness or otherwise on contentions of the Petitioner in that regard, makes it clear that the Petitioner is not precluded from making an application before the CESTAT to treat the amount said to have been recovered under the bond for Rs.40,00,00,000/- in satisfaction of the requirement of the pre-deposit, and the CESTAT after hearing the concerned parties shall pass orders thereon on merits and in accordance with law.

Accordingly, the Writ Petition is dismissed as withdrawn granting such liberty with the aforesaid clarifications. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya
To
Commissioner of Customs
Chennai -IV Commissionerate
Customs House, Chennai - 600 035.

W.P. No. 33419 of 2018

SS (CO)
RMP (15/12/2020)