



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2021

CORAM:

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WP Nos.33652 of 2016 and 15443 of 2017
and WMP Nos.29023 of 2016 and 16731 & 28359 of 2017

Shyamdev Mundra @ Shyamji

..Petitioner in both WPs.

Vs

1. The Additional Director General,
Ministry of Finance,
Department of Revenue,
Directorate of Revenue Intelligence,
Gopalakrishna Iyer Road,
T.Nagar, Chennai - 17. ..R1 in both WPs
2. The Superintendent of Customs, (ADJN),
O/o. The Joint Commissioner of Customs,
Bharathi Nagar,
Ramanathapuram - 623 503.
3. N.Jaganathan ..Respondents 2&3 in WP
No.33652/2016
4. The Additional Commissioner of Customs,
O/o.the Additional Commissioner of Customs,
Bharathi Nagar,
Ramanathapuram - 623 503 ..R2 in WP.No.15443/2017

[R3 impleaded as per order dt. 11.12.2017 by TSSJ in WMP No.31457 /2016 in WP.No.33652/2016]

PRAYER in WP No.33652 of 2016: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the 2nd respondent contained in C.No.VIII/10/17/2015-cus.Adjn. dated 16.08.2016 and quash the same.

PRAYER in WP No.15443 of 2017: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the 2nd respondent made vide order-in-original No.2/2016-17 (ADC) dated 31.03.2017 contained in C.No.VIII/10/17/2015-cus.Adjn. passed by the 2nd Respondent herein and quash the same.



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For Petitioner : Mr.B.Kumar, Sr. Counsel
in both WPs Assisted by Mr.S.Ramachandran

For Respondents: Mr.V.Sundareswaran (for R1 & R2)
in both WPs Sr. Panel Counsel

C O M M O N O R D E R

WP No.33652 of 2016 is filed against the proceedings of the 2nd respondent dated 16.08.2016, wherein the petitioner was requested to appear for personal hearing/cross-examination on 31.08.2016 at 11.00 hours. During the pendency of the said writ petition, order-in-original was passed by the Additional Commissioner of Customs, Ramanathapuram, in proceedings dated 31.03.2017 and the said order-in-original is under challenge in WP No.15443 of 2017.

2. Adjudication of facts in entirety is unnecessary, in view of the fact that the order-in-original under challenge, is an appealable order. The preamble of the order impugned reveals that the appeal shall be filed within 60 days from the date of which this order is communicated to the party and shall be in form C.A.1 and shall be verified in the prescribed manner. The procedures for filing the appeal is also clearly stated in the preamble to the order-in-original. The petitioner instead of preferring an appeal before the competent authority has chosen to file the writ petitions on various grounds.

3. The learned Senior counsel appearing on behalf of the writ petitioner mainly contended that absolutely there is no evidence against the writ petitioner to establish the allegation and the petitioner is having fair chances of succeeding in the case. Further, such an elaborate adjudication of disputed facts cannot be undertaken by the High Court in a writ petition under Article 226 of the Constitution of India.

4. The importance of an appellate remedy to resolve the disputed facts, at no circumstances be undermined and further, the appellate remedy is a valuable opportunity to the aggrieved person to redress their grievances by adjudicating the facts with reference to the original records and evidences.

5. Thus, this Court is of the considered opinion that filing of an appeal is the rule. Entertaining a writ petition is only an exception. If the writ petition is filed on the ground that the authority who issued the order impugned is incompetent or having no jurisdiction under the provisions of the Act in a direct manner or when allegation of malafides are raised, then alone the writ petition needs to be entertained and in all other



circumstances, the aggrieved person is bound to prefer an appeal as provided under the statute.

6. Undoubtedly, writ proceedings may be entertained before exhausting the appellate remedy. However, it is to be ensured that there is an imminent threat or gross injustice warranting urgent relief to be granted. Mere violation of principles of natural justice is insufficient to entertain a writ proceedings under Article 226 of the Constitution of India, as every Writ Petition is filed based on one or the other ground stating that the principles of natural justice is violated or statutory requirements are not complied with or there is an illegality or otherwise. Thus, dispensing with an appellate remedy is to be granted cautiously in view of the fact that the very purpose and object of legislation providing an appellate remedy cannot be diluted nor the benefit be denied to the aggrieved person to exhaust the same. The statutory appellate authorities are the final fact finding authorities. Thus, the finding to be made by such appellate authorities with reference to the documents and evidences are of paramount importance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India.

7. The power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinize the processes through which a decision is taken by the competent authority by following the procedures as contemplated, but not the decision itself. Therefore, the routine entertainment of a Writ Petition by dispensing with appellate remedy is not preferable and such an exercise would cause injury to the institutional hierarchy and the importance attached to such appellate institutions. The appellate institutions provided under the statute at no circumstances be undermined by the higher Courts. The appellate forums are the final fact finding authorities and more so, possessing expertise in a particular field. Thus, the finding of such appellate forums would be a valuable assistance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India. The High Court cannot conduct a roving enquiry with reference to the facts and circumstances based on the documents and evidences. Based on the mere affidavits filed by the litigants, the disputed facts cannot be concluded. Thus, the importance of fact finding by the appellate forums is of more value for the purpose of providing complete justice to the parties approaching the Court of law.

8. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal before the competent appellate authority within a period of four weeks from the date of receipt of a copy of this order. In the event of receiving any such



appeal, the competent authority shall condone the delay if any, taking into consideration the pendency of the writ petition before the High Court and entertain the appeal and dispose of the same on merits and in accordance with law, by affording opportunity to the writ petitioner, as expeditiously as possible.

9. With these directions, both the Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

10. Registry is directed to return the original impugned order to the learned counsel on record, who filed the writ petitions.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Director General,
Ministry of Finance, Department of Revenue,
Directorate of Revenue Intelligence,
Gopalakrishna Iyer Road,
T.Nagar, Chennai - 17.
2. The Superintendent of Customs, (ADJN),
O/o. The Joint Commissioner of Customs,
Bharathi Nagar, Ramanathapuram - 623 503.
3. The Additional Commissioner of Customs,
O/o. The Additional Commissioner of Customs,
Bharathi Nagar, Ramanathapuram - 623 503.
4. The Section Officer,
ER Setion, High Court, Madras.

WP Nos.33652 of 2016
and 15443 of 2017

CA(CO)
RGA(31/08/2021)