

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2701 of 2017

M/s.Kaleesuwari Refinery Pvt., Ltd.,
Represented by its Senior Manager – Legal
Mr.George Thomas,
No.5, Mambakkam Road,
Vengaivasal,
Chennai – 73.

...Petitioner

Vs

The Assistant Commissioner,
Office of the Assistant Commissioner
of Central Excise,
Tambaram Division,
40, Ranga Colony, Rajakilpakkam,
Chennai – 73

... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records of the Respondent's impugned order in original No.208/2016-Rf dated 11.11.2016 bearing Reference C.No.V/18/50/2016-Rf in so far as it declines to grant interest on refund of pre-deposited amount of Rs.15,00,000/- and to quash the same and direct the respondent to sanction interest at 6% from the date of pre-deposit till date of payment.

For Petitioner : M/s.R.Anish Kumar
For Respondent : Mr.A.P.Srinivas
Senior Standing counsel
[For Income Tax]

ORDER

The order in original dated 11.11.2016 passed by the respondent is under challenge in the present writ petition.

2. The Preamble of the impugned order dated 11.11.2016 states that *“any person deeming himself aggrieved by this order may appeal against the same to the Commissioner (Appeals) at 121, Utthamar Gandhi Salai, Chennai – 34.”*

3. The procedures for filing an appeal is also stated in the Preamble of the order impugned. Instead of preferring an appeal, the petitioner has chosen to file the present writ petition.

4. The learned counsel for the petitioner reiterated that the petitioner deposited the amount pursuant to the orders of this Court and therefore, the petitioner is entitled for interest for the deposit already made. Admittedly,

the refund has already been given and the petitioner has filed the present writ petition, claiming the interest part of the refunded amount. Undoubtedly, if at all, the petitioner is entitled with reference to the disputes and in accordance with the provisions of the Act, then such interest is to be paid to the petitioner by following the procedures as contemplated under law. However, the right and entitlement for interest is to be adjudicated by the Appellate authority with reference to the documents and evidences made available. High Court cannot straight away given the relief, granting interest for the refunded amount for the petitioner. The Appellate authority is the final fact finding authority and the adjudication is of greater importance for the purpose of resolving the disputed issues.

5. Preferring an appeal is the rule. Entertaining a Writ Petition before exhausting the appellate remedy is an exception. 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.

6. 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.

7.The point of delay may be an acceptable ground for the purpose of entertaining a Writ Petition. The practise of filing the Writ Petition without exhausting the statutory remedies are in ascending mode and such Writ Petitions are filed with a view to avoid pre-deposits to be made in statutory appeals and on the ground that the appellate remedies are time consuming.

8. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal before the competent authority within a period of four weeks from the date of receipt of a copy of this order in a prescribed format and in the event of receiving any such appeal, the Appellate authority shall consider the same without reference to the delay in filing and dispose of the appeal on merits and in accordance with law and by affording opportunity to the writ petitioner. The learned counsel for the petitioner is permitted to submit additional representations / explanations along with the judgments relied upon.

9. With these directions, the writ petition stands disposed of. No costs.

सत्यमेव जयते

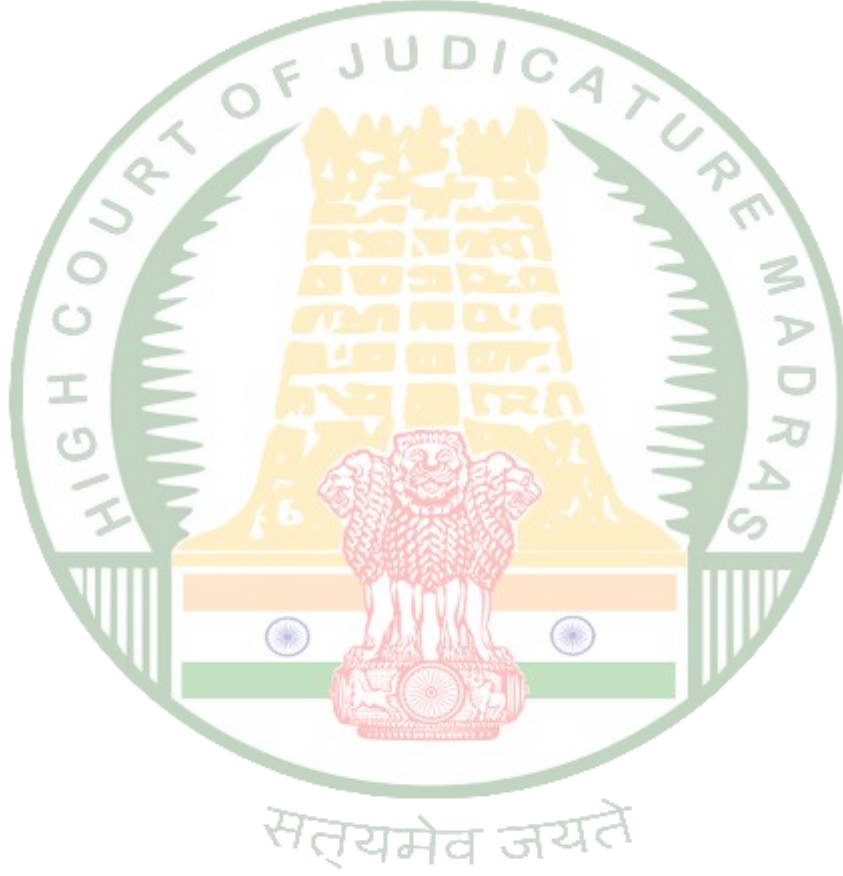
11.08.2021

Speaking order/Non-speaking order
Index : Yes/No
Kak

To

6/8

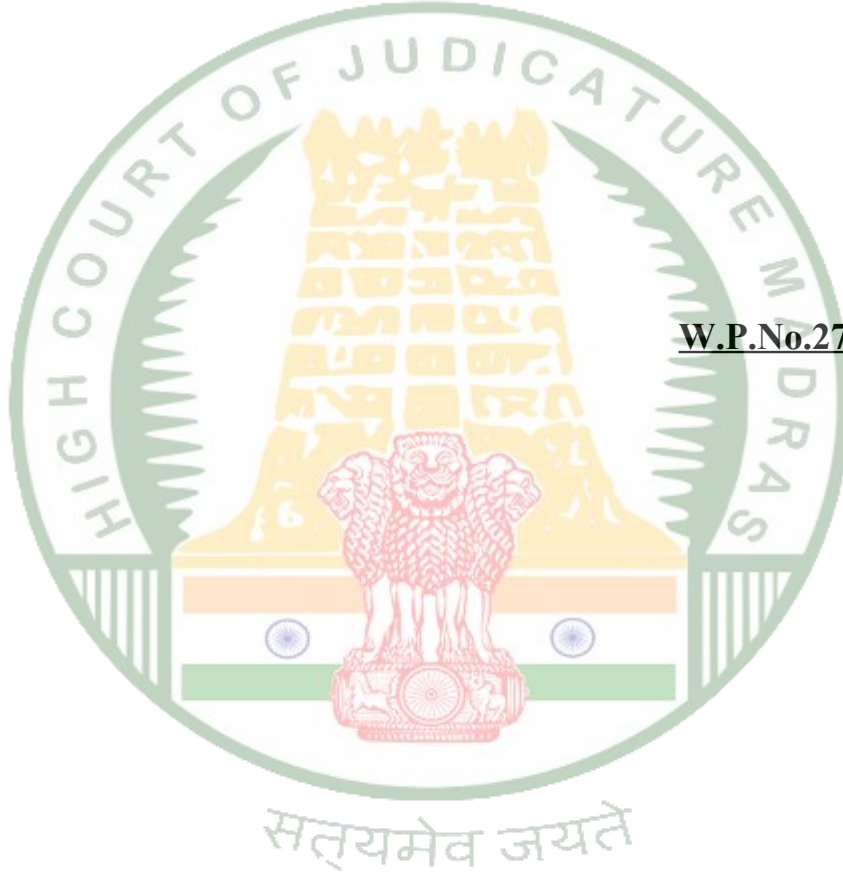
The Assistant Commissioner,
Office of the Assistant Commissioner
of Central Excise,
Tambaram Division,
40, Ranga Colony, Rajakilpakkam,
Chennai – 73.



WEB COPY

S.M.SUBRAMANIAM, J.

Kak



W.P.No.2701 of 2017

WEB COPY **11.08.2021**