



W.P.(MD) Nos.13463 and 13464 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2023

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) Nos.13463 and 13464 of 2023

and

W.M.P.(MD) Nos.11346 and 11347 of 2023

Ambika Cotton Mills Limited,
Unit II, represented by its
Chairman and Managing Director,
P.V.Chandran, Kanniyapuram – Ellaipatty Road,
Kanniyapuram Post,
Dindigul 624 308.

... Petitioner in both W.Ps.,

/vs./

1.The Deputy Commissioner,
Office of the Deputy Commissioner of Customs,
Customs Preventive Unit,
Central Revenue Buildings, IV Floor,
Bibikulam,
Madurai 625 002.

2.The Development Commissioner,
Madras Export Processing Zone,
Ministry of Commerce,
Administrative Office Building,
National Highways,



W.P.(MD) Nos.13463 and 13464 of 2023

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45, Tambaram,
Chennai 600 045.

... Respondents in both W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to C.Nos.VIII/48/17/2022-Cus in DIN.20230481OI000000D020 and VIII/48/18/2022-Cus in DIN.20230481OI000012121D in Order in Original Nos. 01/2023 and 02/2023 dated 27.04.2023 passed by the first Respondent and quash the same as arbitrary and illegal.

For Petitioner
in both W.Ps., : Mr.Joseph Prabakar

For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel assisted by
Mr.K.Prabhu
Junior Standing Counsel

COMMON ORDER

W.P.(MD) No.13463 of 2023 has been filed for the issue of a Writ of Certiorari calling for the records in C.Nos.VIII/48/17/2022-Cus in DIN. 20230481OI000000D020 in Original No.01/2023 dated 27.04.2023 passed by the first Respondent and quashing the same as arbitrary and illegal.



W.P.(MD) Nos.13463 and 13464 of 2023

WEB COPY

2.W.P.(MD) No.13464 of 2023 has been filed for the issue of a Writ of Certiorari calling for the records in C.No.VIII/48/18/2022-Cus in DIN. 20230481OI000012121D in Original No.02/2023 dated 27.04.2023 passed by the first Respondent and quashing the same as arbitrary and illegal.

3.The petitioner has challenged the order passed by the first respondent in and by which the first respondent had ordered confiscation, demanded duty and penalty. At the very outset, the learned counsel appearing for the respondents had taken out a preliminary objection that the writ petitions are not maintainable, as there is an effective alternative remedy in the form of an appeal under Section 128 of the Customs Act, 1962. The learned counsel for the respondents would draw the attention of this Court to the earlier proceedings in respect of the very same issue in W.P.(MD) Nos.8104 and 8105 of 2008, wherein this Court, vide order dated 06.12.2013, had passed the following order:-

“5. I do not want to refer to various grounds as it is evident from going through the same that the petitioners are raising one or other plea, as a matter of fact, disputing facts. Hence, this Court in exercise of the jurisdiction under Article 226 of the Constitution of India, is not inclined to go into the factual disputes raised by the



W.P.(MD) Nos.13463 and 13464 of 2023

WEB COPY

petitioner and decide the matter one way or the other. Since there is an effective alternative remedy under the provisions of the Customs Act, 1962, the writ petitions by-passing the alternative remedy are misconceived.”

4.As against this order, the petitioner appears to have initially filed a review with a delay of 2320 days in CMP.(MD) Nos.6731 and 6732 of 2022 in W.A. (MD) SR.Nos.24846 and 24847 of 2022. This Court was pleased to condone the delay on condition that a sum of Rs.2,000/- each shall be paid to the credit of the The Chief Justice's Relief Fund. Thereafter, it appears that the review applications were numbered as Rev.Aplc.(MD) Nos.16 and 17 of 2014. The records further show that the review petitions were withdrawn, since writ appeals came to be filed in W.A.(MD) Nos.1319 and 1320 of 2022. These appeals were withdrawn unconditionally by the petitioner and by order dated 16.12.2022, this Court was pleased to record the request for permission to withdraw and has dismissed the writ appeals as withdrawn. Therefore, it is the contention of the learned counsel for the respondents that the observation of the learned single Judge in an earlier round of litigation that the petitioner has an alternative remedy and therefore, the writ petitions were not maintainable had attained finality.



W.P.(MD) Nos.13463 and 13464 of 2023

WEB COPY

5. The learned counsel for the petitioner would try to distinguish the same by stating that this Court had deemed it fit to condone the delay and number the review applications as also the writ appeals, which would go to show that the Court was convinced about the merits of the petitioner's arguments.

6. I am not inclined to buy this argument, since the records would speak otherwise. The petitioner by withdrawing the review petitions and the writ appeals has conceded to the correctness of the order passed in W.P.(MD) Nos. 8104 and 8105 of 2008, wherein this Court has clearly and categorically held that the petitioner cannot approach this Court by invoking the provisions of Article 226 of the Constitution of India but should avail only the alternative remedy prescribed in the statute. Therefore, in the light of the earlier orders passed in W.P. (MD) Nos. 8104 and 8105 of 2008, the Writ Petitions filed against the impugned order cannot be maintained as there is an effective alternative remedy available to the petitioner under the Act. It is seen that the petitioner has been agitating the issue since the year 2008. The present writ petition appears to be the third round of litigation.



W.P.(MD) Nos.13463 and 13464 of 2023

WEB COPY

7. In the light of the above, the Writ Petitions are dismissed. The petitioner is directed to file an appeal within a period of two weeks from today without the petitioner awaiting the copy of this order. However, taking into consideration the fact that the petitioner has been *bonafidely* litigating the issue, the appellate authority shall take up the appeal without insisting on the mandatory deposit. The appellate authority shall grant waiver of the pre-deposit as contemplated under the provisions of the Act for filing an appeal. If the appeal is not filed within the given time, it shall be received only on payment of the initial deposit. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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13.06.2023



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W.P.(MD) Nos.13463 and 13464 of 2023

P.T.ASHA, J.

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W.P.(MD) Nos.13463 and 13464 of 2023

13.06.2023