



W.P.(MD)No.25834 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.25834 of 2024
and
W.M.P.(MD)No.21925 of 2024

P.Kumar

... Petitioner

Vs.

The Additional Commissioner,
O/o. the Commissioner of Customs (Preventive),
No.1, Williams Road,
Cantonment,
Trichy – 620 001.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order, the Order in Original No. TCP-CUS-PRV-JTC-107/2024 dated 13.09.2024 passed by the respondent and quash the same.

For Petitioner : Mr.B.Vijay Karthikeyan

For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

Heard Mr.B.Vijay Karthikeyan, learned counsel for the petitioner and
Mr.N.Dilip Kumar, learned Standing Counsel for the respondent.



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2. The present Writ Petition has been filed seeking to quash the Order dated 13.09.2024 passed by the respondent.

3. The learned counsel for the petitioner would vehemently contend that the petitioner had submitted a detailed reply which has not been considered at all by the respondent. Even though an effective alternate remedy is available in view that the order suffers from non application of mind, he would submit that the order impugned would have to be set aside and remitted back to the authority with a direction to consider the reply/objections made by the petitioner dated 27.03.2024.

4. On the contrary, the learned Standing Counsel for the respondent would draw attention of this Court to the order impugned and submit that the claim of the petitioner had been considered by the respondent and only thereafter orders have been passed. He would therefore submit that it cannot be said that the respondent had not considered the claim of the petitioner. The claim of the petitioner may have been rejected on a wrong premise, but that cannot be a reason for him to file a Writ Petition without exhausting an effective alternate remedy that is available to the petitioner and therefore, he would submit that the Writ Petition itself is not maintainable and is liable to be dismissed.



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5. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

6. It is not disputed that there is an appeal remedy available to the petitioner. It is well settled law that even when the appellate remedy is available, this Court can exercise its power under Article 226 of the Constitution of India when there is a violation of principles of natural justice, arbitrariness and colorable exercise of power. In the present case, it is the contention of the petitioner that his reply to the show cause notice had not been considered at all by the respondent while passing the order impugned. According to him, this will amount to non application of mind.

7. I have perused the order impugned before this Court. As rightly pointed out by the learned Standing Counsel appearing for the respondent the petitioner's reply had been considered by the respondent before passing the order impugned. In fact, the respondent had also relied upon the judgments to dispel the reply of the petitioner. In such view of the matter, I am not able to appreciate the argument of the learned counsel for the petitioner that the respondent had not considered the reply made by the petitioner.



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8. In view of the above said findings, I am not inclined to entertain the Writ Petition as the petitioner has got effective alternate remedy by filing an appeal before the Commissioner (Appeals) as indicated in the impugned order.

9. In fine, the Writ Petition stands dismissed with liberty to the petitioner to file an appeal as against the order impugned herein. If the petitioner proposes to file an appeal, he shall file an appeal on or before 13.12.2024. No extension of time shall be granted as the statutory time period including the delay as provided under the Act would expire on 13.12.2024. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

Note: Registry is directed to return the original impugned order to the petitioner after retaining a copy of the same and after getting necessary acknowledgment from the learned counsel for the petitioner.

To:

The Additional Commissioner,
O/o. the Commissioner of Customs (Preventive),
No.1, Williams Road,
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K.KUMARESH BABU, J.

Nsr

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