IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-09-2025

CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WA No. 164 of 2016
and
CMP Nos. 2309 & 12967 of 2016

Alstom T and D India Limited
19/1, GST Road, Pallavaram,
Chennai – 600 043,
Represented by its Senior Manager
(Indirect Taxation)
Mr.S.Sivaramakrishnan

Appellant(s)

Vs

Assistant Commissioner,
Large Tax Payer Unit,
Government of India,
Ministry of Finance,
No.1775, Jawaharlal Nehru Inner Ring
Road, Anna Nagar Western Extension,
Chennai – 600 101.

Respondent(s)

PRAYER

Writ Appeal filed under Clause 15 of Letters Patent, to set aside order dated 03.11.2015 passed by the learned Judge in W.P.No.8959 of 2015 on the file of this High Court and allow the present writ appeal.

For Appellant(s): Mr.Joseph Prabakar

For Respondent(s): Mr.A.P.Srinivas
Senior Standing Counsel
For Customs and Central Excise

J U D G M E N T

(Judgment was delivered by S.M.Subramaniam J.)

The writ order dated 03.11.2015 passed in W.P.No.8959 of 2015 is sought to be assailed in the present writ appeal.

2. The order in original dated 23.01.2015 passed by the Assistant Commissioner was under challenge in the writ proceedings. The learned Single Judge while dismissing the writ petition without going into the merits, made a finding that the appellant has to exhaust the statutory remedy

contemplated under the Act. Even in the order in original, the authority has specifically stated that an appeal against the said order shall lie before the Commissioner of Central Excise (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

3. Writ petitions are often filed raising grounds regarding violation of rules of natural justice or jurisdiction, to avoid paying duty for preferring an appeal and to circumvent the deposit while preferring an appeal. However, this approach may not be encouraged by the High Court, if alternative remedies are available under the Statutes.

4. It is needless to state that all grounds on merits, including legal grounds can be adjudicated before the Appellate Authority. The Appellate Authority is empowered to consider the legal grounds including jurisdiction and violations of principles of natural justice. When such an opportunity is available before the Appellate Authority under the Statute, entertaining a writ petition is unnecessary.

5. This exactly is the reason why the Constitutional Courts time and again reiterates that exhausting the alternate remedies under the Statute is of paramount importance and an aggrieved person has to exhaust the alternate remedies before approaching the High Court under Article 226 of the Constitution of India. The power of judicial review under Article 226 is limited. High Court cannot conduct a roving inquiry nor adjudicate the disputed facts, which is to be undertaken by the Original Authority and the Appellate Authority by scrutinizing the original documents and evidences. Therefore, adjudication of disputed facts in writ proceedings may cause prejudice to the parties.

6. That apart, findings of fact by the Original Authority and the Appellate Authority would be of greater assistance to the High Court for effective exercise of powers of judicial review. Once the factual disputes are considered before these Authorities, and the findings made thereon would be useful for the High Court to form final opinion with reference to the issues raised between the parties.

7. The Parliament thought fit and contemplated alternate mechanism for correcting the orders of the original authority. Importance of the provisions for approaching the Appellate Authority need not be undermined, since it is an efficacious remedy contemplated under the statute. Therefore, in all circumstances, an aggrieved person has to exhaust the alternate remedies contemplated under the statutes.

8. In the present case, the learned counsel for the appellant would mainly contend that the Original Authority/Assistant Commissioner, Central Excise and Service Tax has no jurisdiction. The demand that has been raised for 12 years is without jurisdiction and under Section 28 of the Customs Act, 1962, there is no power. However, Courts while taking these two grounds, setting aside the order may result in adverse consequences as far as the revenue is concerned. Even in such circumstances, the Writ Court has to remand the matter back for adjudication of issues by complying with the rules of natural justice or by considering legal grounds.

9. Per contra, the appellate authority would be in a better position to

appreciate all these grounds and grant appropriate relief to the aggrieved person. This exactly is the reason why Courts have repeatedly held that an alternate remedy/appellate remedy contemplated under the Act is to be exhausted.

10. Mr.A.P.Srinivas, learned Senior Standing Counsel appearing on behalf of the respondent would submit that no time-line has been fixed under Rule 8 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture Excisable Goods) Rules, 1996. Therefore, it is continuous obligation to pay duty as contemplated under law. Since the grounds relating to jurisdiction and demand has been objected by the respondent it would be preferable to allow the appellant to adjudicate these issues before the Appellate Authority based on the documents and evidences available on record.

11. Leaving open the issues raised between the parties, including legal grounds, this Court do not find any infirmity in respect of the writ order relegating the appellant to prefer an appeal in the manner contemplated under

the Act. In the event of appellant preferring an appeal, the Appellate Authority shall dispose of the same on merits in accordance with law as expeditiously as possible. Consequently, the Writ Appeal stands dismissed. The connected Miscellaneous Petitions are closed. There shall be no order as to costs.

(S.M.SUBRAMANIAM J.)(MOHAMMED SHAFFIQ J.)
16-09-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

Jeni

To

The Assistant Commissioner
Large Tax Payer Unit, Government Of
India, Ministry Of Finance, No.1775,
Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 101

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AND
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