(2011) 12 KL CK 0030

In the High Court Of Kerala

Case No : W.A. No. 1931 of 2011

Leotex APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 129A

Citation : (2012) 281 ELT 176

Hon'ble Judges : Manjula Chellur, Acting C.J.;F.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : G. Krishnakumar and Titto Thomas, for the Appellant; John Varghese, SC, P. Parameswaran Nair, ASGI, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, ACJ.

1. Whether the verdict passed by the learned Single Judge relegating the appellant herein to avail the statutory remedy is correct or not is the issue involved in this Writ Appeal. The grievance projected by the appellant pertains to the rights and liberties of the appellants to have the benefit under the Duties Drawback Scheme in connection with the export business being pursued by the appellant. The appellant/petitioner is an exporter of coir products and originally he sought to have the benefit under the DEPB scheme. But, subsequently, the appellant found that he would be benefited more by virtue of the terms of another scheme declared by the Government, i.e., the Drawback Scheme governed by the Customs and Central Excise Duties Drawback Rules, 1995. It was in the said circumstances that, the appellant /petitioner approached this Court by filing WF (C) No. 5549 of 2007 Leotex Vs. Union of India, . After hearing both sides, the said Writ Petition was disposed of as per Ext. P6 judgment referring to the specific contention of the writ petitioner that he was entitled to have the benefit of Rule 12 of the Duty Drawback Rules exempting the writ

petitioner from complying with the provisions of the Rules and accordingly, the matter was disposed to have the claim considered with reference to the Rules as aforesaid. Pursuant to the said verdict, the matter was considered by the competent authority, who passed Ext. P7 order dated 20-9-2011 whereby the claim was rejected, which made the petitioner to approach this Court again by filing the instant Writ Petition, WP (C) No. 31671 of 2011.

2. The case of the appellant/petitioner was considered especially with regard to the submission that the issue was squarely covered by Ext. P6 judgment rendered earlier and as such, there was no point in availing the alternative remedy, which compelled the writ petitioner to approach this Court by filing the Writ Petition under Article226of the Constitution of India. After going through Ext. P6 judgment, the learned Single Judge observed that there was no positive direction declaring the rights and liberties of the writ petitioner to have the benefit of the scheme under Rule 12 of the Duty Drawback Rules and that only the direction was to have the claim considered in accordance with Rule 12 of the above Rules. It was after considering the matter in accordance with the direction given as aforesaid that Ext. P7 order was passed by the concerned respondent, which was the subject matter for challenge. It was observed by the learned Single Judge that the writ petitioner was entitled to challenge the said order by way of further appeal and this being the position, there was no need or necessity to have it considered invoking the discretionary jurisdiction under Article 226 of the Constitution. The Writ Petition was accordingly dismissed, which was under challenge in this Writ Appeal.

3. Heard the learned Standing Counsel appearing for the respondents as well.

4. On going through the materials on record, we find that no positive direction was given by the learned Single Judge of this Court when the earlier round of Writ Petition was finalised as per Ext. P6 judgment so as to have the claim of the writ petitioner considered with reference to the proviso to Rule 12(1) of the Duty Drawback Rules. In other words, there was no declaration that the writ petitioner was entitled to have the benefit though such a relief was prayed for in the said Writ Petition. According to the respondents, the writ petitioner is not entitled to have the benefit as sought for, which resulted in Ext. P7 order. If the writ petitioner/appellant is aggrieved of the said order, it is open to the party to have it challenged by way of availing the statutory remedy by way of appeal u/s 129A of the Customs Act. In the above circumstances, we find that there is no illegality, irregularity or impropriety with the course of proceedings and the judgment passed by the learned Single Judge is not assailable under any circumstance.

5. In response to the submission made by the learned counsel for the appellant that some breathing time is required for preferring the appeal, the learned Standing Counsel appearing for the respondents submits that there is clear provision under the Statute itself for condoning the delay and it is open for the appellant to prefer the appeal with a petition to condone the delay. In the above

circumstances, no orders are necessary in this regard as well. Interference is declined and the Writ Appeal is dismissed without prejudice to the rights and liberties of the appellant to pursue the statutory remedy as aforesaid.