

(2010) 05 CAL CK 0079

In the Calcutta High Court

Case No : A.P.O. No. 136 of 2010 and G.A. No. 1350 of 2010

Mica Manufacturing Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Citation : (2010) 20 STR 735

Hon'ble Judges : Mohit S. Shah, C.J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Ananda Sen and Aniruddha Mitra, for the Appellant;K.K. Maiti, for the Respondent

Judgement

1. The Court: We are of the view, it is no use disposing of the application only, rather having regard to nature and extent of the matter, by consent of the parties, dispensing with all the formalities, the appeal itself is taken up for hearing along with the stay application.

2. This appeal assails the order of the learned single Judge dated 3rd March, 2010 by which His Lordship has been pleased to dismiss the writ petition observing that since there exists alternative remedy, it would be proper to relegate the matter to the Appellate Authority.

3. Learned Counsel for the Appellants has drawn our attention to the order admitting the writ petition dated 12th April, 2007 passed by another single Judge where His Lordship in exercise of discretion decided to hear out the matter on affidavits; of course, His Lordship reserved the point of maintainability. Learned Counsel submits that when the writ petition was admitted with a rider of maintainability, it was not proper for the learned single Judge to dismiss the writ petition on the ground of existence of alternative remedy.

4. We have heard the learned Counsel for the parties on this issue. The only point for consideration is whether the Hon'ble court of the first instance on the facts and circumstances of the case was justified in dismissing the writ petition

on the point of existence of alternative remedy. We are of the view, alternative remedy does not render a writ petition non-maintainable. Such plea may be relevant to issue of entertain ability which cannot be synonymous with maintainability.

5. The question of maintainability, in our view, has got many a facets which includes the question of jurisdiction etc. We are of the view, when the matter was admitted by the learned single Judge in exercise of his jurisdiction to hear out the matter on merits, at a subsequent stage, in the same proceedings on the ground of existence of alternative remedy, the writ Petitioner should not have been asked to avail of the alternative remedy. It was very clear that there was a time limit for preferring an appeal and with the time consumed for keeping this matter pending, the period of limitation would be over. These facts should have been taken into consideration by the learned Judge of the first instance.

6. It is a settled law that existence of alternative remedy is not a bar in entertaining the writ petition and to decide the same on merits, wherever it is possible. While hearing the learned Counsel and going through the materials, we find that it was possible for the writ Court to decide the matter on merits when, it is alleged, amongst others, that the adjudicating authority, namely, the Assistant Commissioner of Central Excise had taken into consideration of material which was not permissible under the law, to be considered. Under such circumstances, we are of the prima facie view that the question of improper exercise of jurisdiction is involved.

7. Therefore, we have no option but to set aside the impugned judgment and remit back the matter for fresh hearing. We request the learned Judge to decide the matter on merits. This recording should not be construed to be forming of any final opinion on the subject. All points are kept open to be decided.

8. The bank guarantee already furnished shall remain and, if necessary, from time to time the same shall be renewed. In default of renewal of bank guarantee, interim order already passed by the learned single Judge shall stand vacated. We request the learned Judge to hear out the matter, if possible within a period of three months from the date of bringing this order to the notice of the learned single Judge.

9. Certified photostate copy of this order be made available to the parties upon compliance of usual formalities.