

(2001) 06 MAD CK 0094

In the Madras High Court

Case No : Writ Petition No's. 16950 to 16952 of 1992 and W.M.P. No's. 24151 to 24153 of 1992

MYM Exporters

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Imports and Exports (Control) Act, 1947 — Section 4M

Citation : (2001) 132 ELT 561

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : M. Ranka, for the Appellant; S. Udaya Kumar, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—In W.P. No. 16950 of 1992, M/s. MYM Exporters, a proprietary concern carrying on business at Bombay has filed this writ petition praying this Court to issue appropriate writ or direction in the nature of certiorarified mandamus calling for records from Respondent No. 5 relating to File No. 88/362/86 SIB/148/85 quash the order dated 29-6-1986 despatched on 12-12-1986, marked ANNEXURE "L" and direct the Respondent No. 5 to release the cargo covering the Bills of Entry (i) I.M. No. 1148/85 L.No. 87/-, dated 6-1-1986 and (ii) I.M. No. 23/86 with such further or other order or orders as this Honourable Court might deem fit.

2. The very same writ petitioner filed W.P. No. 16951 of 1992 praying for the issue of a writ of certiorari to call for records in file No. 9/82/Hq/88-89 ECA. I/3131/3937/2988 from Respondent No. 3 herein and quash the adjudication order dated 23rd September, 1991/3-8-1992 ANNEXURE "S" passed by the Respondent No. 3 with such further or other order or orders as this Honourable Court might deem fit.

3. The last of the writ petition has also been filed by the very same petitioner praying for the issue of a writ in the nature of certiorari calling for records in F.No. 11/34/86/ECA Bombay/2172 on the file of the Respondent No. 4 and quash the order dated 25-2-1988/19-4 ANNEXURE T-I" passed by Respondent No. 4 herein rejecting the petitioner's appeal against cancellation of two advance licences (i) P/K/3064753/1-5-1985 and (ii) P.K./3097077, dated 9-8-1985 and pass such further or other order or orders as this Honourable Court might deem fit.

4. Heard Mr. Ranka, learned Counsel appearing for the petitioner in all the three writ petitions and Mr. S. Udaya Kumar, learned Addl. Central Government Standing Counsel appearing for all the respondents in all the three writ petitions.

5. It is the preliminary contention of the learned Counsel for the respondent that the petitioner who has got a statutory remedy before CEGAT or other Appellate Authority is not entitled to maintain these writ petitions without exhausting the remedy of appeal. The learned Counsel for the respondents relies upon the Division Bench judgment of this Court as well as the judgment of the Supreme Court in support of his preliminary objection.

6. Mr. Ranka, learned Counsel for the petitioner contended that the writ petition is of the year 1992 and it is always open to the petitioner to come before this Court even without exhausting the statutory remedy of appeal statutory remedy of appeal is not a bar to invoke the writ jurisdiction of this Court. The learned Counsel for the petitioner advanced number of contentions in support of his arguments with vehemence and in his usual inimitable style. The learned Counsel for the petitioner took the Court through the common affidavit filed in support of the writ petitions as well as the counter affidavit filed on behalf of the respondents and contended that the impugned proceedings are liable to be quashed, and that the petitioner shall not be asked to go before the appellate authority merely because the petitioner had not exhausted the appeal remedy.

7. The learned Counsel for the petitioner also contended that the respondents have acted not only arbitrarily, but also maliciously and vindictively with a view to harass the petitioner and, therefore, the petitioner would be justified in coming before this Court. Mr. Ranka also referred to various events, which according to him will reflect on the conduct of the respondents. Mr. Ranka also pointed out that only the 5th respondent had filed the counter affidavit and the other respondents have not filed their counter. Though these arguments advanced by Mr. Ranka are attractive, this Court is not persuaded to sustain the same as no specific allegations of mala fides have been made by impleading the individual officer concerned. In the absence of such allegation, it will be sufficient if one of the respondents file the counter.

8. It is true that the writ petition has been pending for ten years, but on that score, on the facts of the case and when a remedy of appeal is undisputably available to the petitioners, it is not open to the petitioner to come before this

Court and invoke the remedy under Article 226. On the facts of the case, the petitioner should have exhausted the statutory remedy of appeal, which is efficacious and without exhausting the said remedy, the petitioner had rushed to this Court. It is not as if there is violation of principles of natural justice, which may constitute a better reason to approach this Court without exhausting the appeal remedy.

9. Even though number of years have rolled by now, this Court would not be justified in examining the contentions on merits when the petitioner has got a remedy of appeal. In fact, the petitioner has also moved appeals, which is said to be pending even as on today in respect of substantial portion, viz., two of his grievances. Presumably, these appeals are kept pending because of this Court issuing a Rule Nisi. However, on that score, learned Counsel for the petitioner will not be justified in contending that the remedy of statutory appeal is not a efficacious remedy.

10. As against the order, which is impugned in W.P. No. 16950 of 1992, a remedy of appeal is available u/s 129B(2) before the Special Bench of the Customs, Excise and Gold (Control) Appellate Tribunal having its Registry at Madras. As against the order impugned in the said writ petition, which is dated 26-9-1986, only during the year 1992, the petitioner had filed the present writ petition where there is a delay of more than six years in moving the writ petition. This is fatal.

11. In respect of W.P. No. 16951 of 1992, as against the order impugned, which is dated 20-9-1991, a remedy of appeal is available before the Appellate Authority u/s 4(M) of the Imports and Exports (Control) Act, 1947 as amended. Though this impugned order is dated 23-9-1991, the present writ petition has been filed only on 28-10-1992.

12. In respect of W.P. No. 16952 of 1992, as against the order impugned dated 25-2-1988, a remedy of appeal is also available under Clause 10(Z) of the Imports (Control) Order, 1995 within 45 days from the date of the order before the competent authority. But the petitioner kept quiet and filed the writ petition only on 28-10-1992 after a lapse of six years. This inordinate delay is definitely fatal to this writ petition.

13. After having kept quiet for considerable number of years and allowing the statutory appeals to become barred by limitation, and allowed the orders to become final, after a lapse of six long years and above the present writ petitions have been filed. The delay in this respect is fatal and the petitioner has not explained the delay at all. At any rate, the delay of six years cannot be explained nor it has been explained. A remedy of appeal not having been exhausted and the proceedings having been allowed to become final, it is not open to the petitioner to come before this Court and file the present writ petitions after a lapse of six years. It is not only on laches, but also on ground that the petitioner having allowed the orders to become final and having kept quiet for six years had

approached this Court. On this ground alone, these writ petitions are liable to be dismissed.

14. Having allowed the orders of adjudication or other proceedings to become final, it is not open to the petitioner to come before this Court after the expiry of six years and move the present writ petitions. Such a delay is fatal to the writ petitions. It is true that the writ petitions have been pending, but on that score, the petitioner cannot be allowed to contend that this Court will not dismiss the writ petition as highly belated or for laches. Further, the delay being inordinate, it has to be taken that the petitioner had accepted the order and as an after thought the present writ petitions have been moved.

15. In the nature of the order which this Court proposes to pass, it is unnecessary to refer to the merits of the case as argued by Mr. Ranka and it is also not necessary to refer to the affidavit filed in support of the writ petition or set out the facts leading to the writ petition as narrated by the petitioner in all the three writ petitions.

16. The learned Addl. Central Government Standing Counsel rightly relied upon the Division Bench judgment of this Court in Collector of Customs, Madras v. Madras Electric Castings Pvt. Ltd. reported in The Collector of Customs Vs. Madras Electric Castings P. Ltd., in support of his contention that it would not be just and proper for this Court to entertain the writ petition as the orders are appealable to the Customs, Excise and Gold (Control) Appellate Tribunal, which can go into the question of fact and law and can set aside or affirm or annul the order or remand it for fresh consideration. Such an order passed by the Appellate Tribunal could very well be challenged before the Supreme Court. In this respect, the Division Bench held as follows :-

"9. We may also point here that even otherwise also, it would not be just and appropriate for this Court to entertain the writ petition, because the order is appealable to the Customs, Excise and Gold (Control) Appellate Tribunal, which can go into the questions of fact and law and can set aside or affirm or annul the order or remand it for fresh consideration. The order passed by the Customs, Excise and Gold (Control) Appellate Tribunal can also be challenged before the Supreme Court. When there is efficacious alternative remedy provided, it would not be just and appropriate for this Court even to adjudicate upon the validity of the Order of the Collector. Even otherwise, the validity of the order of Collector cannot appropriately be adjudicated ignoring the appeal provision. There would be no reason whatsoever to pass on order for directing the release of the confiscated goods, without adjudicating the validity of the order of the Collector, directing confiscation of the goods. It may be pointed out that directing or relating of the goods would arise only, if it is found that the confiscation ordered is not sustainable. The redemption of the goods can be allowed only if the goods are to be confiscated. Therefore, without going into the validity of the confiscation order, the direction of the nature issued in the writ petition is not permissible."

17. Another Division Bench of this Court in *The Commercial Credit Corporation (1943) Pvt. Ltd., Madras Vs. The Commissioner, Corporation of Madras, and others*, has laid down that a writ petition under Article 226 is not maintainable when a remedy of statutory appeal is available and more so, the Appellate Tribunal is entitled to go into the facts as well as the merits and decide the matter.

18. In the circumstances, following the two Division Bench judgments of this Court, this Court also holds that the writ petitions are liable to be dismissed.

19. For the above reasons and for the foregoing discussions, this Court, while declining to go into the merits of the writ petitions, and while holding that the writ petitions are highly belated that the petitioner is guilty of laches, further, that the petitioner had failed to exhaust the remedy of appeal and had approached the Court after six long years from the date of the impugned proceedings, that there are no bona fides in moving these writ petitions at the belated point of time and while pointing out that the petitioner had allowed the impugned proceedings to become final by keeping silent for six long years, it is not open to the petitioner to come before this Court and challenge the impugned proceedings. These are not fit cases where this Court would be justified in taking up the matter and examining the various contentions advanced by Mr. Ranka.

20. For the above reasons, all the three writ petitions are dismissed. Consequently, connected W.M.P.s are also dismissed. Parties shall bear their respective costs.