IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.2.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4178 of 2015
and
M.P.No.1 of 2015

M/s.ABT Limited
rep. by Chief Executive
180 Race Course Road
Coimbatore 641 018 ... Petitioner

vs.

1 The Commissioner of Customs,
Central Excise & Service Tax
6/7 ATD Street Race Course Road
Coimbatore 641 018

2 The Additional Commissioner
of Customs, Central Excise & Service Tax
6/7 ATD Street Race Course Road
Coimbatore 641 018 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records of the case relating to the impugned order in original in C.No.V/MRS/15/14/2013-ST.ADJ/OIO SL.No.74/2014-ADC dated 16.12.2014 passed by the 2nd respondent and to quash the same.

For Petitioner : Mr.T.Ramesh
For Respondents : Mr.A.P.Srinivas

ORDER

Petitioner has come forward with the aforesaid prayer.

2. Admittedly, against the order impugned in this writ petition, appeal lies to the appellate authority within a period of two months from the date of receipt of the order. For the earlier period, the petitioner has preferred appeal and obtained interim order. The petitioner has contended that when the said petition has already been allowed and the matter is pending, the present order is not correct and the authority should have awaited the verdict of the matter that

is pending before the appellate authority.

3. The learned counsel for the respondents submitted three appeals filed in respect of the previous years are pending before the appellate authority and when the petitioner has got remedy of appeal, bypassing that and knocking at the doors of this court may not be correct and their remedy is only before the appellate authority.

4. The petitioner drew the attention of this court to a decision in W.P.No.24794 of 2014 dated 17th October 2014. The case cited by the petitioner may not be applicable to this case as in that case, the authority passed an order completely without regarding the orders of the appellate authority and when a writ petition was filed before this court, the court interfered and quashed the order but, that is not the case here. In this case, the petitioner suffered a final order from the original authority against which only appeal lies.

5. The learned counsel for the respondents submitted that the petitioner has got 90 days time to prefer appeal (60 days plus 30 days - the appellate authority is empowered to condone the delay of 30 days) and the discretion is vested with the appellate authority.

6. Since the petitioner has approached this court, this court makes it very clear that the period during which the writ petition was pending before this court, i.e., from the date of filing till the date, the copy of the order is made ready, shall be excluded for the purpose of computing the limitation period in approaching the appellate authority.

7. The writ petition is disposed of accordingly, No order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To
1 The Commissioner of Customs,
Central Excise & Service Tax
6/7 ATD Street Race Course Road
Coimbatore 641 018

2 The Additional Commissioner
of Customs, Central Excise & Service Tax
6/7 ATD Street Race Course Road
Coimbatore 641 018.

1 cc to Mr.T.Ramesh ,Advocate, SR.No.8732

mg(co)
pmk.12.3.2015