IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY
W.P.No.32784 of 2015 and
M.P.No.1 of 2015

M/s.ICMC Corporation Ltd [Petitioner]
Rep. by its General Manager
and Authorised Signatory
36 Ambattur Industrial Estate
Chennai-600 058.

Vs

1 Preventive Officer
Office of The Deputy Commissioner
of Customs - Group V
Department of Customs
Office of the Commissioner of Cusoms(Imports)
60 Rajaji Salai Custom House, Chennai

2 The Superintendent of Customs-SIIB
Department of Customs
Office of The Chief Commissioner of Customs
No.60 Rajaji Salai Custom House Chennai-600 001.

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records relating to the Bill of Entry No.5363496 dated 1.5.2014 on the file of the 1st Respondent and quash the same and consequently direct the 1st Respondent to assess the payment of duty as per the Section 4 of the Central Excise Act 1944 on merits.

For Petitioner : Mr.M.S.Krishnan, Senior Counsel for Mr.J.James

For Respondents : Mr.K.Mohanamurali Senior Panel Counsel

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified mandamus, to call for the records relating to the Bill of Entry dated 1.5.2014 on the file of the 1st respondent and to quash the same and consequently to direct the 1st respondent to assess the payment of duty as per the Section 4 of the Central Excise Act, 1944.

2. It is the case of the petitioner that the petitioner Corporation preferred an appeal as against the Bill of Entry dated 01.05.2014 on the file of the 1st respondent with a delay of 18 days. The Commissioner of Appeals-II, Department of Customs, dismissed the appeal on the ground of limitation, stating that the appeal has been preferred beyond the statutory period prescribed under the Act. Thereafter, the petitioner preferred a writ petition in W.P.No.32610 of 2014 to issue a writ of mandamus to direct the Commissioner of Appeals-II, Department of Customs, to condone the delay of 18 days beyond the statutory period. This Court, by order dated 04.03.2015 dismissed the writ petition. Now, after the dismissal of the said writ petition, the petitioner has filed the present writ petition challenging the Bill of Entry dated 01.05.2014, which was already challenged by the petitioner before the Commissioner of Appeals-II, Customs Department.

3. Mr.M.S.Krishnan, learned Senior Counsel appearing for the petitioner submitted that since the appeal preferred by the petitioner before the Commissioner of Appeals was dismissed on the ground of limitation, there will not be merger of the order passed by the Commissioner of Appeals. Further, the learned Senior Counsel submitted that since there is no merger, the present writ petition filed by the petitioner challenging the Bill of Entry dated 01.05.2014 is maintainable.

4. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

5. In the case on hand, the petitioner had already challenged the Bill of Entry dated 01.05.2014, which was rightly dismissed by the Commissioner of Appeals- II, on the ground of limitation. The said order passed by the Commissioner of Appeals-II was also confirmed by this Court in the writ petition in W.P.No.32610 of 2014. After the dismissal of the said writ petition, the petitioner has come forward with the present writ petition challenging the Bill of Entry dated 01.05.2014. The petitioner has taken different avenues to challenge the Bill of Entry dated 01.05.2014. First he filed an appeal before the Commissioner of Appeals-II, which was dismissed on the ground of limitation. Thereafter, this Court also confirmed the order passed by the Commissioner of Appeals-II in the writ petition. Now, after the dismissal of the said writ petition, the petitioner has challenged the original Bill of Entry dated 01.05.2014. Hence, I am of the considered view that if the petitioner is allowed to challenge the Bill of Entry dated 01.05.2014, after the dismissal of the appeal and the writ petition, the matter will not reach finality. That apart, when a specific limitation has been prescribed under the Act, the petitioner should have filed an appeal within the stipulated time. Having failed to do so and having lost in the writ petition also, the prayer sought in the writ petition cannot be allowed.

6. In these circumstances, the writ petition is devoid of merits and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1 Preventive Officer
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of Customs - Group V
Department of Customs
Office of the Commissioner of Cusoms(Imports)
60 Rajaji Salai Custom House, Chennai

2 The Superintendent of Customs-SIIB
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No.60 Rajaji Salai Custom House Chennai-600 001.

1 cc to Mr.J. James, Advocate, Sr. 15617
1 cc to Mr.K. Mohanamurli, Advocate, Sr. 15355

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