IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 9.8.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.33838 of 2015
and M.P.Nos.1 and 2 of 2015 in W.P.No.33838 of 2015
and M.P.No.3 of 2015 in W.P.No.2030 of 2015

M/s.SRA Systems Ltd
No.100, Valluvar Kottam High Road
Nungambakkam
Chennai-600 034 ... Petitioner

versus

1.The Commissioner of Customs (Appeals) I
60, Rajaji Salai, Customs House,
Chennai 1.

2.The Deputy Commissioner of Customs (Group 7 ACC)
Air Port and Air Cargo Complex
Meenambakkam
Chennai-600 027 ... Respondents

W.P.No.33838 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the case relating to the 1st respondent impugned Order in Appeal C.Cus I No.376/2015 dated 30.06.2015 and quash the same and there by directing the 1st Respondent to restore the Appeal No.C3-1/313/D/2015-AIR dated 30.06.2015 and to hear the said Appeal on merits.

For petitioner ... Mr.T.Ramesh
For respondents ... Mr.S.Rajasekar SPC

O R D E R

Heard Thiru.T.Ramesh, learned counsel for the petitioner and Thiru.Rajasekar, Senior Central Government Standing Counsel for the respondents.

2. The petitioner in W.P.No.33838 of 2015 has challenged the order in appeal passed by the Commissioner (Appeals) dated 30.6.2015, by which the petitioner's appeal petition was rejected, as having been filed beyond the time stipulated by this Court in W.P.No.2030 of 2015. The said Writ Petition, viz., W.P.No.2030 of 2015 was filed challenging the recovery notice as

well as order in original dated 30.12.2009. The Writ Petition in W.P.No.2030 of 2015 was disposed of by order dated 27.3.2015, directing the petitioner to prefer an appeal within fifteen days from the date of the order and on payment of 10% of the amount, together with agreed interest, as mentioned in the impugned order before filing the appeal. It was further made clear that without deposit of amount, the appeal would not be entertained. As per the order passed in the Writ Petition, the time starts from the date of the order. Therefore, the petitioner could have presented the appeal on or before 11.4.2015, after remitting 10% of the amount, as directed. Unfortunately, the learned counsel for the petitioner was unaware of the fact that the time for filing appeal commenced from the date of the order and he was under the bona fide impression that time starts from the date of receipt of certified copy of the order. The learned counsel for the petitioner was furnished with the certified copy of the order only during June 2015, i.e. after the Court reopened after summer vacation. Within fifteen days from the date of receipt of copy of the order, the petitioner has presented the appeal papers, after remitting 10% of the amount. Under the given facts and circumstances, the order passed by the Commissioner (Appeals) cannot be faulted because the time stipulated by this Court within which the appeal could be filed, commenced from the date of the order. Nevertheless, this Court taking into consideration the over all facts and circumstances of the case and considering the genuine mistake committed by the learned counsel in not ascertaining as to the exact nature of the direction issued, is of the view that the petitioner should not be put to prejudice.

3. In the light of the above, the Writ Petition is allowed and the impugned order is set aside and the Commissioner (Appeals) is directed to take the appeal on file and decide the same on merits and in accordance with law. Consequently, M.P.Nos.1, 2 and 3 of 2015 stands disposed of.
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s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Customs (Appeals) I,
60, Rajaji Salai, Customs House, Chennai 1.

2.The Deputy Commissioner of Customs (RRU)
Air Port and Air Cargo Complex
Meenambakkam
Chennai-600 027

+ 1 cc to Mr.T.Ramesh, Advocate SR 45444

+ 1 cc to Mr.S.Rajasekar, Advocate SR 45497

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prk30/8 W.P.Nos.33838 of 2015