

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22257 of 2016 and

WMP.No.18988 of 2016

M/s.M.M.Enterprises,
No.106, Audiappa Naicken Sreet,
Sowcarpet, Chennai - 600 079
Represented by its Proprietrix
Authorised Signatory.

.. Petitioner

Vs.

1.The Commissioner of Custom (Appeals-II)
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Assistant Commissioner of Customs,
(Refunds-Sea), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, call for the records 1st respondent, leading to issuance of Order in Appeal in C.Cus.-II No.232/2016 dated 04.03.2016, and quash the same, and further direct the 2nd respondent to consider the refund claim filed by the petitioner in light of the orders of Hon'ble Tribunal.

For Petitioner : Mr.B.Sathish Sundar
For Respondents : Mr.A.P.Srinivas, SPC

ORDER

Heard Mr.B.Sathish Sundar, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel for the respondents. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner has filed this writ petition challenging the order passed by the Commissioner of Customs (Appeals-II), Chennai dated 04.03.2016. It may not be necessary to go into the factual aspects of the matter, since the appeal petition has

been rejected as time barred. In paragraph 5 of the impugned order, the respondent has recorded as to why the appeal is beyond time. It has been stated that the Order-in-Original passed by the Deputy Commissioner of Customs (Refunds) dated 14.08.2014 was dispatched on 01.09.2014 and the petitioner claimed that they have not received the Order-in-Original and have taken a copy from the authority on 06.11.2015 wherein the Superintendent has specifically mentioned that 'the original copy dispatched on 01.09.2014, photocopy attested on 06.11.2015' and handed over to the petitioner. After referring to the contention raised by the petitioner that there is no proof that the Order-in-Original was dispatched on 01.09.2014, the petitioner had pleaded before the Commissioner (Appeals-II) to entertain the appeal petition by mentioning that the period of limitation should be computed from 06.11.2015. It appears that the Commissioner (Appeals-II) has called for a report from the Refunds Section wherein the Refunds Section has stated that the Order-in-Original was dispatched on 01.09.2014 by registered post. Therefore, the Commissioner (Appeals-II) presumed that the petitioner would have received the order on 4th or 5th September 2014 as the petitioner is in Chennai. In my view, such a presumption could not be drawn especially when the petitioner has taken a firm stand that they have not been communicated with the Order-in-Original dated 14.08.2014. Therefore, the proof of service of the Order was essential when the assessee makes a claim that they have not received the order. In such circumstances, dispatch of the order would not mean service of the order on the assessee and no such presumption can be drawn when it is disputed. Therefore, on the said short ground, this Court is convinced that the appeal should be heard on merits.

3. Accordingly, the Writ Petition is allowed and the Commissioner of Customs (Appeals-II) is directed to entertain the appeal petition filed by the petitioner and decide the same on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.
sgl

s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Custom (Appeals-II)
Custom House, No.60, Rajaji Salai, Chennai - 600 001.
2. The Assistant Commissioner of Customs,
(Refunds-Sea), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

+ 1 cc to M/s.B.Satish Sundar, Advocate SR 41688

+ 1 c to M/s.A.P.Srinivas, Sr.Standing counsel SR 42258

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W.P.No.22257 of 2016



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