IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22997 of 2016
&
W.M.P.No.19714 of 2016

Shri. Mujib Rahim ... Petitioner

Versus

The Additional Commissioner,
Office of the Commissioner of Customs
(Airport & Air Cargo),
New Customs House, Meenambakkam,
Chennai - 600 027. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to direct the Respondent to take on file the appeal filed by the petitioner along with condone delay application dated 21.01.2016.

For Petitioner : No Appearance

For Respondent : Mr.S.R.Sundar,
Senior Panel Counsel

O R D E R

None appears for the petitioner. Heard Mr.S.R.Sundar, learned Senior Panel Counsel appearing for the respondent.

2. In this writ petition, the petitioner seeks for the issuance of a writ of mandamus to direct the respondent to take on file the appeal filed by the petitioner, along with the condone delay application.

3. Admittedly, the appeal, which has been filed by the petitioner, is beyond the period of limitation. The statute provides for an outer limit, where the Appellate Authority can exercise the jurisdiction and condone the delay, if sufficient cause has been shown. Beyond the said date, the Appellate Authority has no power to condone the delay. Therefore, the issue would be as to whether, the prayer sought for by the petitioner can be granted.

4. This issue is no longer res integra and has been settled by several decisions, of which, it may be beneficial to refer to few of them, namely, Singh Enterprises vs. CCE, Jamshedpur reported in 2008 (221) ELT 163 (SC), Commissioner of Customs & Central Excise vs. Hongo India (P) Ltd., reported in 2009 (236) ELT 417 (SC), Chattisgarh State Electricity Board vs. Central Electricity Regulatory Commission reported in 2010 (5) SCC 23. In the above said decisions, it was clearly held that Section 5 of the Limitation Act cannot be applied beyond the condonable period. That apart, furthermore, in the decision reported in 2002 (1) CTC 406 (Indian Coffee Worker's Co-operative Society Ltd. vs. Commissioner of Commercial Taxes), this Court has categorically held that there was no power to this court under Article 226 of the Constitution of India to exercise its discretion and condone the delay. The above decisions were followed by the Honourable Division Bench in the case of R.Gowrishankar vs. The Commissioner of Service Tax (Appeals)-1, in Writ Appeal no.589 of 2016 and the writ appeal was dismissed.

5. However, in the case of Hindustan Apparel Industries. vs. The Assistant Commissioner of Customs and others reported in [2015] (323) ELT 344 (Mad.), the same view was taken and it was held that there was no power to this court to direct the authority to condone the delay nor the court can condone the delay and direct the appeal to be numbered.

6. Hence, the prayer sought for by the petitioner cannot be granted. However, it is open to the petitioner to work out other remedies available to him under law. The writ petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

PVS

+1cc to Mr.S.R.Sundar, Advocate, S.R.No.49894

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