

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY**

WRIT PETITION No. 6427 OF 2016

ORDER: *{Per the Hon'ble Sri Justice Ramesh Ranganathan}*

The relief sought in the writ petition is to declare the impugned letter dated 07.01.2016 issued by the second respondent, seeking to invoke the provisions of Section 87 of the Finance Act, 1994, pending disposal of the appeal before the first respondent, against the Order-in-Original dated 13.07.2009, as arbitrary and illegal.

Against the Order-in-Original passed by the Additional Commissioner on 13.07.2009, an appeal lay to the first respondent. As the petitioner claimed to have filed an appeal, we asked the learned Standing Counsel to ascertain as to why the appeal was not been disposed of.

A counter affidavit is filed by the Commissioner of Central Excise stating that the petitioner has not filed any material document to show that the appeal was received by the first respondent; even according to the petitioner, the appeal was preferred on 16.07.2011, though the Order-in-Original dated 13.07.2009 was received by them on 27.09.2009 itself; the first respondent lacks jurisdiction to entertain the appeal since the statute does not permit the appellate authority, under Section 35 of the Central Excise Act, 1944, to condone the delay beyond the period of 90 days; and since the appeal was allegedly filed on 16.07.2011, which is almost two years from the date of receipt of the order dated 27.09.2009, the question of entertaining the appeal does not arise.

Except for a bare averment that the appeal was preferred,

no material has been placed on record to show the date on which a copy of the appeal was filed in the office of the first respondent. In the light of the specific denial in the counter affidavit in this regard, and as the appeal is said to have been preferred on 16.07.2011, far beyond 90 days period which alone can be condoned by the first respondent, no direction can now be issued to the first respondent to entertain any such appeal. We see no reason, therefore, to interfere with the action taken by the second respondent, or with the proceedings dated 07.01.2016 issued by him.

The writ petition fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

Date: 28.03.2016

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