IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13552 of 1995 & W.M.P.No.21715 of 1995

Shri Mahalakshmi Steels,
Rep. by its Partner,
Mr.Anil Kumar Ozha,
403-D, Thiruvottiyur High Road,
Madra-600 019. ... Petitioner

Vs.

The Assistant Commissioner of
Central Excise, Madras Division III,
Madras-35. ... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in order in C.No.IV/16/214/94 adj.dt:23.02.1995 received by the petitioner on 04.03.1995 quash the same and consequently direct the respondent to grant the petitioner the benefit of deemed credit under Order 36/94 TRU dated 01.03.1994 under Rule 57G (2) of the Central Excise Rules.

For Petitioner : Mr.C.Seethapathy

For Respondent : Mr.A.P.Srinivas,
Senior Panel Counsel

O R D E R

Heard Mr.C.Seethapathy, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel for the respondent.

2.The petitioner has filed this writ petition challenging the order passed by the respondent dated 23.02.1995. By the impugned order, the respondent has confirmed the demand of Rs.1,54,477/-, being the deemed credit wrongly availed by the petitioner. Admittedly as against the impugned order, the petitioner has an effective alternate remedy by way of an appeal to the Collector (Appeals). However, the petitioner did not file an appeal, but has filed this writ petition, challenging the impugned order by placing reliance on two orders passed by the appellate authority, dated 13.03.1995 and 25.05.1995.

According to the petitioner, both the orders are in favour of the respective assesses and factually, the orders would apply to the petitioner's case.

3.However, the petitioner without filing the statutory appeal as against the impugned order cannot maintain the writ petition against the impugned order and the present writ petition has been filed by the petitioner well beyond the period of limitation for filing an appeal. The Appellate authority has no jurisdiction to condone the delay beyond the period of three months. Therefore, the present attempt of the petitioner in challenging the impugned order, on the grounds raised is not tenable.

For the above reasons, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

abr

To

The Assistant Commissioner of
Central Excise, Madras Division III,
Madras-35.

+1 C.C. to Mr.C.Seethapathy Advocate SR.NO. 67409/17

W.P.No.13552 of 1995

BR(CO)
T.R (27/10/2017)