

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.4462 of 2017 and WMP.No.4674/2017

M/s.A.W.Travel & Logistics Services Limited
rep. by its Managing Director
Shri Manak Shirohia,
No.96, Thambu Chetty Street,
2nd Floor, Chennai-1.

... Petitioner

Vs.

The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai-1.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order-in-original 48550/2016 dated 22.07.2016 in F.No.R-235/CHA passed by the respondent and quash the same so far as it relates to the imposition of penalty of Rs.50,000/-.

For Petitioner : Mr.G.Derrick Sam
For Respondent : Mr.S.Rajasekaran

सत्यमेव जयते
O R D E R

Heard Mr.G.Derrick Sam, learned Counsel for the petitioner and Mr.S.Rajasekaran, learned Standing Counsel for the respondent.

2. The petitioner is before this Court challenging the impugned order-in-original in F.No.R-235/CHA, dated 22.07.2016, passed by the respondent.

3. The contention raised by the petitioner is that the Show Cause Notice issued by the first respondent dated 18.03.2014 is barred by limitation as it is beyond the period of three years.

4. On a perusal of the impugned order, I find that the petitioner has not raised this contention before the Commissioner. Therefore, this Court invoking its jurisdiction under Article 226 of the Constitution of India will not test the correctness of the impugned order on the said ground which was never canvassed before the 1st respondent and permit the petitioner to raise such contention before the appellate authority where the appellate remedy is available. It may be true that the limitation is the question of law, but, it is not a pure question of law, but a mixed question of law and fact. Therefore, the petitioner has to necessarily avail the appellate remedy available before the CESTAT as it is efficacious and effective remedy and the petitioner would be in a position to reappraise the factual position. Thus, for the above reasons, the Writ Petition is held to be not maintainable and accordingly, dismissed.

5. Taking into consideration the fact that the petitioner had earlier approached this Court and had challenged the order of suspension of the licence of the petitioner company and during the pendency of that writ petition, these proceedings were initiated. Therefore, this Court is inclined to grant reasonable time to the petitioner to file an appeal before the CESTAT.

6. Accordingly, rejecting the Writ Petition as not maintainable, liberty is granted to the petitioner to file an appeal as against the impugned order, within a period of 30 days from the date of receipt of a copy of this Order. If such appeal is filed within the time prescribed, the CESTAT shall not reject the same on the ground of limitation as the court has granted liberty to file the appeal, considering the peculiar facts and circumstances of the case.

7. The Registry is directed to return the original impugned order to the petitioner. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

tsi

To

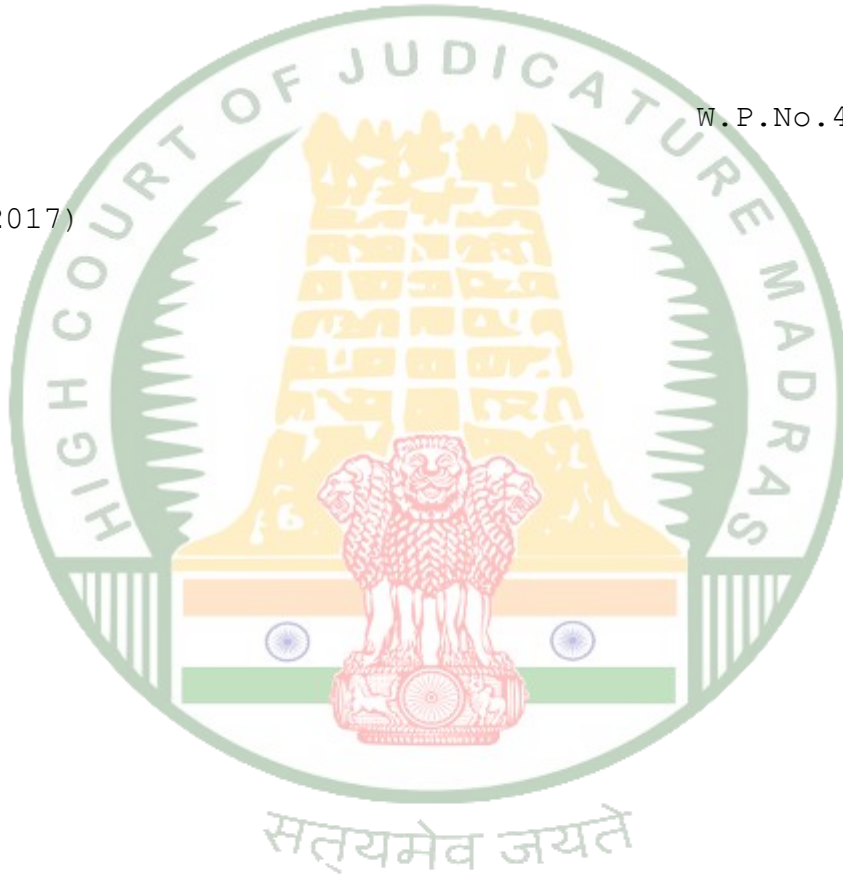
The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai-1.

+lcc to M/S.Hari RadhaKrishnan, Advocate Sr. 47017

+lcc to M/S.S.Rajasekaran, Advocate Sr. 47085

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AR(IV)
VR(17/07/2017)



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