IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.15660 of 2017

Mrs.Jerena Begam,
W/o Mr.Gulam Mohideen Shahul Hamid ... Petitioner

Vs.

1. The Principal Commissioner of Customs (Appeals)
   Customs House,
   Parrys,
   Chennai 600 001.

2. The Additional/Deputy/Assistant Commissioner of Customs (Airport),
   Office of the Deputy/Assistant Commissioner of Customs,
   Preventive Department,
   Anna International Airport,
   Meenambakkam,
   Chennai 600 027. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order in appeal C.CUS-I No.354 dated 15.12.2016, on the file of the first respondent, quash the same and issue consequential direction, directing the first respondent to restore the petitioner appeal to entertain and to decide the petitioner appeal on its merits.

For Petitioner : Mr.G.Dakshinamurthy

For Respondents : Mr.N.Senthil Kumar
Senior Panal Counsel

O R D E R

Heard Mr.G.Dakshinamurthy, learned counsel for the petitioner and Mr.N.Senthil Kumar, learned Senior Panal Counsel appearing for the respondents.

2. The petitioner is aggrieved by an order passed by the first respondent dismissing the petitioner's appeal petition

vide order dated 15.12.2016, on the ground that it has been presented beyond the period of limitation stipulated under Section 128 of the Customs Act, 1962. The said provision provides that an appeal against the Commissioner (Appeals) shall be filed within a period of 60 days from the date of receipt of the order of the original authority and the Commissioner (Appeals) is empowerd to entertain the appeal beyond the period of 60 days upto a further period of 30 days, provided the appellant shows sufficient cause for condoning the delay. Thus the statute prescribes the time limit of 90 days, beyond which the appeal cannot be entertained.

3. This Court is inclined to consider the case of the petitioner owing to the peculiar facts and circumstances of the case much of which has not been denied by the Revenue. Therefore, this case should not be treated as a precedent for any other cases for seeking of condonation of the delay beyond the condonable period. This Court is inclined to treat this case as a very peculiar and distinct case, which may not recur in other matters owing to a decision of the Central Government by bringing into force the Demonetization Act, which came into effect on 08.11.2016.

4. The Order-in-Original was passed on 30.07.2016 and communicated to the petitioner by post and received by the petitioner's landlord on 10.08.2016, as at the relevant point of time, the petitioner was abroad. The petitioner's case is that she came to know about the order on 15.08.2016 and took steps to prefer an appeal. If the period of limitation is computed from the date on which the petitioner's landlord received the order, i.e., on 10.08.2016, the 60 days period came to an end on 09.10.2016.

5. The petitioner did not file the appeal within the said date and she had another 30 days time to file the appeal, that is upto 08.11.2016, subject to showing sufficient cause. According to the petitioner, after she came back to India, she was given the Order-in-Original dated 30.07.2016 and thus, the date of knowledge should be taken as 15.08.2016, and if that date is taken, the period of 60 days will be 14.10.2016. Further 30 days would come to an end on 13.11.2016. Thus, in the absence of any record to dispute the petitioner's contention that she became aware of the Order-in-Original dated 30.07.2016, prior to 15.08.2016, this Court is inclined to accept the said submission made by the petitioner and would take the date of knowledge of the Order-in-Original as 15.08.2016 and if that date is taken, the petitioner's appeal petition is well within the condonable period of 90 days. Therefore, what is required to be seen is whether the petitioner had shown sufficient cause for not filing the appeal within the 60 days period.

6. The petitioner has stated that she was unable to present the appeal prior to 10.11.2016, on account of the fact that demonetization was announced on 08.11.2016. The Revenue cannot deny the fact that all the Bank operations were frozen on 08.11.2016. But, however, the Banks even refused to accept the transactions by mid-noon of 08.11.2016. Thus, considering the fact that this was a matter which was wholly beyond the control of the petitioner, this Court is of the view that the petitioner should not be denied the appeal remedy on a technical ground.

7. The above contention is supported by a decision of this Court in the case of M/s.Planet Pop Foods Pvt.Ltd., Vs. The Assistant Commissioner of Customs, (Special Valuation Branch), Chennai, in W.P.Nos.28908 and 28909 of 2016, where in some what a similar circumstances, where the appeal petition was initially filed in a letter format, which was not accepted and subsequently, when filed in an appropriate format, it was beyond the time, the Court held that what is required to be considered in the given facts is as to whether the representation made by the petitioner therein could be treated as an appeal to assail the correctness of the Order-in-Original, so as to compute the period of limitation under Section 128 of the Act. The Court referred to the decision in the case of Motilal Padampat Sugar Mills Vs. State of U.P., AIR 1979 SC 621, for the proposition that there is no presumption in this Country that every person knows the law and held that the petitioner therein cannot be emasculated by adopting a pedantic approach and rejecting the appeal on the ground of limitation rather than deciding the same on merits.

8. Thus, for all the above reasons, this Court is inclined to hold that the appeal was filed by the petitioner within the condonable period, by accepting the date of knowledge of the petitioner as 15.08.2016 and accepting the cause pleaded by the petitioner for not being able to lodge the appeal within 60 days and accordingly, the delay in filing the appeal is condoned. In the result, the writ petition is allowed and the impugned order is set aside. The delay in filing the appeal is condoned and the first respondent is directed to take on file the petitioner's appeal and decide the matter in accordance with law. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsk/vsm

To

1. The Principal Commissioner of Customs (Appeals)
   Customs House,
   Parries,
   Chennai 600 001.

2. The Additional/Deputy/Assistant Commissioner
   of Customs (Airport),
   Office of the Deputy/Assistant Commissioner
   of Customs,
   Preventive Department,
   Anna International Airport,
   Meenambakkam,
   Chennai 600 027.

+1cc to Mr.G.Dakshinamurthy, Advocate, S.R.No.50173
+1cc to Mr.N.Senthil Kumar, Advocate, S.R.No.50268

W.P.No.15660 of 2017

AR(CS V)
CS/11/08/17