IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.35543 of 2007

Syed Habeeb Badsha ...Petitioner

Vs.

1.The Joint Commissioner of Customs (Gr.5B & C)
Customs House,
No.33 Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs (Appeals)
Customs House,
Chennai - 600 001.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, Writ of Certiorari to call for records relating to the impugned order passed by the second respondent in No.C3/188/O/2007-Sea/C.Cus.261/2007 dated 30.04.2007 and quash the same, and to direct the respondents to hear the appeal on merits by condoning the delay in filing the appeal.

For Petitioner : Mr.M.Abdul Nazeer

For Respondents : Mr.S.R.Sundar
Special Panel Counsel

O R D E R

Heard Mr. M. Abdul Nazeer, the learned counsel appearing for the petitioner and Mr. S.R. Sundar, learned Special Panel Counsel for the respondents.



2. The petitioner, in this Writ Petition, has challenged the order passed by the second respondent, dated 30.04.2007, and to direct the second respondent to hear the appeal on merits by condoning the delay in filing the appeal.

3. The Appeal filed by the petitioner is admittedly beyond the statutory period of limitation, and also beyond the condonable period. An identical issue was considered by me, in

the case of (Shri.Mujib Rahim Vs. The Additional Commissioner, New Customs House, Meenambakkam, Chennai) in W.P.No.22997 of 2016, dated 01.09.2016, wherein, it is held as follows:-

> "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. "

4. In the light of the above legal position, there is no error in the impugned order. Accordingly, the Writ Petition fails and it is dismissed. It is open to the petitioner to workout the other remedies available to him under law. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Joint Commissioner of Customs (Gr.5B & C)
Customs House,
No.33 Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs (Appeals)
Customs House,
Chennai - 600 001.

+1cc to M/s.M.Abdul Nazeer,Advocate sr.47547

Writ Petition No.35543 of 2007

cp(co)
ss(19/7/2017)