IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.39696 & 39697 of 2004

Shri Sathyanarayanan,
M/s.Sakthi Clearing Agents,
20, Narayanappa Street, 2nd Floor,
Chennai-600 001. ... Petitioner in both W.Ps.

Vs.

1. The Additional Commissioner of Customs,
Customs House,
33, Rajaji Salai, Chennai.

2. The Commissioner of Customs (Appeals),
Customs House, 33 Rajaji Salai, Chennai.

... Respondents in both W.Ps.

Prayer in W.P.No.39696 of 2004 : Petition filed under Article 226 of the Constitution of India praying to condone the delay in filing the appeal before the second respondent against the Order-in-Original No.1176/03, dated 22.12.2003 passed by the first respondent and issue Writ of Mandamus, to direct the second respondent herein to admit the appeal against the order of the first respondent dated 22.12.2003 and pass orders on merits without going into the aspect of condonation of delay in filing the appeal before the second respondent.

Prayer in W.P.No.39697 of 2004 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the files of the respondent relating to the impugned Order-in-Original No.1176/2003, dated 22.12.2003, passed by the first respondent and quash the said impugned order passed by the first respondent.

For Petitioner : Mr.T.Ramesh

For Respondents : Mr.K.Ravi,
Senior Panel Counsel

COMMON ORDER

Heard Mr.T.Ramesh, learned counsel appearing for the petitioner and Mr.K.Ravi, learned Senior Panel Counsel appearing for the respondents.

2.The petitioner is a clearing and forwarding agent, who had been granted licence under the Custom House Agents Licensing Regulations, 1994. It appears that the petitioner came to adverse notice of the first respondent, which led to the passing of the impugned order dated 22.12.2003, in which the penalty of Rs.1,50,000/-, has been imposed on the petitioner under Section 112(b) of the Customs Act, 1962. As a consequence of the impugned order, the petitioner's CHA licence has been suspended. As against the impugned order dated 22.12.2003, the petitioner has an appellate remedy before the Commissioner of Customs (Appeals) and there is a time limitation within which such appeal should have been filed. Admittedly, the petitioner did not file appeal within the time, rather within the condonable period of such time limitation and appeal was presented belatedly with the delay. Since the Commissioner of Customs (Appeals), has no jurisdiction to condone the delay beyond the period of thirty days over and above 60 days period of limitation, obviously, the appeal was not taken on file. This has necessitated the petitioner to come before this Court by filing these two writ petitions. In W.P.No.39696 of 2004, the petitioner seeks for a direction upon the Appellate Commissioner to take up the appeal on file without reference to limitation. In W.P.No.39697 of 2004, the petitioner has challenged the Order-in-Original No.1176 of 2003 dated 22.12.2003. It has been repeatedly held by the Court that if the statute prescribes a time limit for preferring an appeal, the Court exercising jurisdiction under Article 226 of the Constitution of India would not be justified in extending the period of limitation.

3.However, I consider the case on hand as a very peculiar matter for more than one reason. Firstly, the Order-in-Original No.1176 of 2003, was passed on 23.12.2003, and these writ petitions have been filed before this Court in the year 2004. The petitioner had the benefit of stay with effect from 03.01.2005. In spite of that, the petitioner has not been able to operate the CHA licence. Thus, this is a fit case, where this Court exercising its discretion could direct the Commissioner of Customs (Appeals), to hear the appeal petition filed by the petitioner without reference to limitation.

4.Accordingly, these writ petitions are disposed of with a direction to Commissioner of Customs (Appeals) to take up the petitioner's appeal petition on file without reference to limitation, if the appeal petition is in order and pass orders on merits and in accordance with law after affording an opportunity of personal hearing to the petitioner/authorized representative. In the event, the file is not traceable, the petitioner can be called upon to produce the copies maintained by them, after which the appeal will be taken up for disposal. The Commissioner of Customs (Appeals) is requested to dispose of the appeal as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Additional Commissioner of Customs,
   Customs House,
   33, Rajaji Salai, Chennai.

2. The Commissioner of Customs (Appeals),
   Customs House, 33 Rajaji Salai,
   Chennai.

+1cc to Mr.T.Ramesh, Advocate, S.R.No.75637
+1cc to Mr.K.Ravi, Advocate, S.R.No.75397

W.P.Nos.39696 & 39697 of 2004

RR(CO)
CA(20/11/2017)