

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.10.2018

CORAM
THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.45447 of 2002

Shri.S.Arunachalam
B-6, Mahajothi Nilayam,
Santhankuppam village, Kelambakkam,
Chengalpat District.

...Petitioner

..Vs..

1. Customs, Excise and Gold (Control)
Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan,
Chennai-600 006.

2. Commissioner of customs (Air),
Air cargo complex,
Meenambakkam,
Chennai-600 001.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent culminating in stay order No.622 to 624/2002 dated 17.10.2002 passed by the first respondent herein and quash the same directing the first respondent to hear the appeal without insisting on payment of pre-deposit of penalty by the petitioner herein and to decide the appeal on merits.

For Petitioner : Mr.S.Murugappan

For Respondent-2 : Mr.P.Rajkumar Jhabakh

ORDER

It is submitted by the learned counsel for the petitioner that as against the order passed by the first respondent i.e. Customs, Excise and Gold (Control) Appellate Tribunal, (in short, CEGAT), dated 17.10.2002, this Writ Petition has been filed.

2. The learned counsel for the petitioner would further submit that as against the order of CEGAT, which is replaced presently by Customs Excise Service Tax Appellate Tribunal (CESTAT), a Civil Miscellaneous Appeal will lie before the

Division Bench of this Court. Therefore, the learned counsel for the petitioner wants to convert this Writ Petition into Civil Miscellaneous Appeal by filing an appropriate appeal against the impugned order herein.

3. In this regard, the learned counsel for the petitioner has relied upon the earlier order passed by the learned Single Judge of this Court in a similar matter which reads thus:

"The learned counsel for the petitioner has submitted that since the petitioner has filed this Writ Petition challenging the order passed by the CESTAT, the Writ Petition may be converted to Civil Miscellaneous Appeal.

2. Permission is granted. As and when such application is filed by the petitioner, the same shall be listed before the appropriate Division Bench".

4. I have heard Mr.P.Rajkumar Jhabakh, learned Standing Counsel for the second-respondent also.

5. In view of the said submission made by the learned counsel for the petitioner and in view of the earlier order passed by the learned Judge in similar circumstances, this Court is inclined to pass the following order, while disposing of these Writ Petitions.

6. The order passed by the first respondent (CEGAT), which is now known as CESTAT can be agitated by the petitioner by filing a proper Civil Miscellaneous Appeal and such permission is granted by this Court. Once such appeal is filed, the same can be entertained and the same shall be listed before the appropriate Division Bench of this Court.

7. The Registry is directed to return the original impugned order to the learned counsel for the petitioner after getting proper acknowledgement.

8. Accordingly, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srn

To

1. Customs, Excise and Gold (Control)
Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan,
Chennai-600 006.
2. Commissioner of customs (Air),
Air cargo complex,
Meenambakkam,
Chennai-600 001.

W.P.No.45447 of 2002

VSNI(CO)

rrs 16/11/2018



WEB COPY