

In the High Court of Judicature at Madras

Dated : 13.7.2018

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition No.1561 of 2012

M/s. Samsung India Electronics P.
Ltd., rep. by its Chief Financial
Officer Mr. Wooyul Shim

...Petitioner

Vs

1. The Commissioner of Customs
(Appeals), No.60, Rajaji Salai,
Custom House, Chennai-1.

2. The Deputy/Assistant Commissioner
of Customs, Gr.5A Custom House,
No.60, Rajaji Salai, Chennai-1.

3. The Commissioner of Customs
(Imports), No.60, Rajaji Salai,
Custom House, Chennai-1.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records on the file of 1st respondent relating to the order in Appeal C.Cus.Nos.564 to 601 dated 26.8.2011 passed by the Commissioner of Customs (Appeals), Sea Port, Custom House, Chennai, quash the same as without jurisdiction, arbitrary and illegal and consequently direct the 1st respondent to decide the appeals filed by the petitioner on merits after condoning the delay in filing the appeals.

For Petitioner : Mr.N.Ramesh

For Respondents : Mr.V.Sundareswaran, SPC

ORDER

Heard both.

2. The petitioner filed this writ petition challenging the order passed by the Commissioner of Customs (Appeals) dated 26.8.2011.

3. The said order has been passed not on the merits of the case, but on the ground that the appeals were filed beyond the

condonable period as prescribed under Section 128 of the Customs Act, 1962.

4. The writ petition has been pending before this Court since 2012 and the counter affidavit filed by the respondents touches upon the merits of the matter as well as reiterates the stand taken in the impugned order. It is no doubt true that the appeals have been filed belatedly. However, the delay is less than two days. Therefore, this Court is of the view that the petitioner's right to file the appeals, which is a statutory right, should not be defeated on such a technical ground, though this Court ruled in several cases that the period of limitation prescribed under the Statute should not be extended by this Court. However, considering the peculiar facts and circumstances of the case and also the fact that the delay is less than two days, this Court is inclined to exercise its discretion and condone the delay.

5. Accordingly, the writ petition is allowed, the impugned order is set aside and the delay in filing the appeals is condoned. The first respondent is directed to take on file the appeal petitions and after notice to the petitioner and after affording an opportunity of personal hearing to the authorized representative of the petitioner, dispose of the same on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Customs (Appeals), No.60, Rajaji Salai, Custom House, Chennai-1.

2.The Deputy/Assistant Commissioner of Customs, Gr.5A Custom House, No.60, Rajaji Salai, Chennai-1.

3.The Commissioner of Customs (Imports), No.60, Rajaji Salai, Custom House, Chennai-1.

WP.No.1561 of 2012

NRL(CO)
GSP(20/07/2018)