IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.2.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1154 OF 2016

1.Commissioner of Customs (Appeal),
Customs House,
No.60 (33), Rajaji Salai,
Chennai 1

2.Deputy Commissioner of Customs,
Special Valuation Branch
O/oTHe commissioner of Customs (Sea Port)
Custom House, No.60(33), Rajaji Salai,
Chennai 1 ... Appellant

versus

M/s.Kwang Jin India Auto Systems Pvt. Ltd.
(formerly M/s.Technokwang Jin Auto Systems Ltd.)
Plot No.G8, G9 G10,
SIPCOT Industrial Part,
Sriperumbudur,
Kanchipuram District ... Respondent

Appeal filed against the order passed by this Court dated 25.8.2015 in W.P.No.23715 of 2014.

W.P.No.23715 of 2014:

Writ Petition filed under Article 226 of the constitution of India for the issuance of a Writ of Certiorarified Mandamus to quash the Order-In-Appeal C.Cus No.162/2014 dated 03/02/2014 passed by the 1st respondent and direct the 1st Respondent to decide the case on merit based on the decisions of Apex Court and CESTAT Chennai (supra)

For appellant : Ms.Hema Muralikrishnan
For Respondents : Mr.K.Sengutuvan

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The appeal filed by the respondents challenging the order dated 29 August 2013 on the file of the Deputy commissioner of Customs (Sea-Port) Chennai, was dismissed by the Commissioner (Appeals) by order dated 3 February 2014 on the ground that it was barred by limitation. The Writ Petition filed by the respondent challenging the said order was allowed by the learned Single Judge primarily on the ground that there is merit in the case pleaded by the respondent and as such, the assessee should be permitted to agitate the matter before the Appellate Authority. The Appellate Authority was directed to entertain the appeal and decide the matter on merits and in accordance with law. The order is under challenge at the instance of the Commissioner of Appeals, primarily on the ground that there is a statutory bar in entertaining the appeal after the expiry of the bonus period of sixty days granted under the proviso to Sub Section (1) of Section 128 of the Customs Act, 1962.

2. The learned Standing Counsel for the appellants contended that while granting relief to the respondent, the learned Single Judge virtually violated the statutory provision. According to the learned counsel, the Appellate Authority has no right to condone the delay beyond the period of sixty days, in case the appeal was not filed within the period of sixty days provided under sub Section (1) of Section 128. Since outer time limit is fixed, the court has no power to extend the period of limitation.

3. The learned counsel for the respondent while justifying the order passed by the writ court, contended that the appellant is having a very good case on merits. According to the learned counsel, it was only to enable the respondent to prove its case before the Appellate Authority, the learned single Judge condoned the delay.

4. The core question is as to whether the learned Single Judge was correct in extending the period of limitation notwithstanding the proviso appended to sub Section (1) of Section 128 providing for a further period of thirty days for presentation of appeal.

5. The assessee is entitled to file an appeal before the Appellate Authority under Sub Section (1) of Section 128 of the Customs Act, 1962. The appeal must be filed within a period of sixty days. The Statutory Authority is given a mandate to entertain the appeal after the expiry of sixty days in case it is filed within a further period of sixty days, provided the

assessee is in a position to account for the delay in a satisfactory manner.

6. There is no provision under Section 128 of the Customs Act to extend the period of limitation beyond ninety days for filing the appeal. The statutory period is sixty days and the grace period is another thirty days. Section 128 of the Customs Act is very clear that the appeal shall be filed within sixty days. The Appellate Authority is given a discretion to entertain the appeal by condoning the delay up to thirty days counted from the expiry of sixty days prescribed under sub section (1) of Section 128 for filing appeal. There is no other provision to condone the delay after the expiry of thirty day's grace period.

7. The appeal is a creature of the statute. In case the legislature in its wisdom imposed certain conditions for entertaining the appeal, the assessee cannot be heard to say that the appeal should be entertained notwithstanding the non compliance of the condition. It is not within the province of the Court to extend the period of limitation by invoking Section 5 of the Limitation Act when there is no indication that the period could be extended after the grace period. The Court must respect the Legislative mandate.

8. The learned single Judge without reference to the outer time limit prescribed by the Statute for filing appeal, directed the Commissioner of Appeal to entertain the appeal. The Commissioner is statutorily not bound to entertain the appeal on account of the delay beyond the permissible limit. We are therefore of the view that the order impugned in this intra court appeal deserves to be set aside.

9. The order dated 25 August 2015 is set aside. The Writ Petition in W.P.No.23715 of 2014 is dismissed.

10. In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To

1.The Commissioner of Customs (Appeal),
Customs House,
No.60 (33), Rajaji Salai,
Chennai 1

2.The Deputy Commissioner of Customs,
Special Valuation Branch
O/oTHe commissioner of Customs (Sea Port)
Custom House, No.60(33), Rajaji Salai,
Chennai 1

+1 CC to Mrs. Hema Muralikrishnan,Advocate sr 15240

W.A.No.1154 OF 2016

SP(23/05/2018)