

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.23511 of 2004
and
W.M.P.No.28473 of 2004

Elite Mission Hospital,
Rep. by its Managing Director
Dr.K.K.Mohandas,
P.O.Koorkenchery,
Trichur - 680 007. Petitioner

Vs.

- 1.The Commissioner of Customs (Sea Port),
Custom House, Rajaji Salai,
Chennai - 600 001.
- 2.The Customs Excise & Service,
Tax Appellate Tribunal,
WTC Building : FKCCI Complex,
Kempegowda Road,
Bangalore - 560 009. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the second respondent in stay order no.427 of 2004 dated 06.05.2004 in C/St/193/2003 in Appeal No.C/287/2003 and quash the same and to direct the second respondent to hear Appeal No.C/287/2003 without insisting on pre-deposit of duty.

For Petitioner : Mr.M.Rajendiran

For Respondents: Mr.A.P.Srinivas
Standing Counsel for C & CE

O R D E R

The prayer sought for in this writ petition is to call for the records of the second respondent in Stay Order No.427 of 2004 dated 06.05.2004 in C/St/193/2003 in

Appeal No.C/287/2003 and to quash the same and further to direct the second respondent to hear the Appeal No.C/287/2003 without insisting on pre-deposit of duty.

2. Section 130 r/w. Section 130-C of the Customs Act, provides for an appeal against the final order of the Appellate Tribunal. As such, this Writ Petition challenging the order of the Customs Act, is not maintainable. Since the memorandum of appeal is required to be filed in the prescribed form by framing a substantial question of law involved, it would not be appropriate to place this matter before the Division Bench also.

3. It is further seen that this writ petition has been filed on 05.08.2004, which is within the limitation prescribed for preferring an appeal under Section 130 of Customs Act and as such, I am of the view that the petitioner can be given an opportunity to file an appeal as against the order impugned in this writ petition.

4. In the light of the above observations, this Writ Petition stands closed, with a liberty to the petitioner to challenge the order of the Appellate Tribunal dated 06.05.2004, by way of an appeal before this Court, within 30 days from the date of receipt of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

DP/arb

To

1. The Commissioner of Customs (Sea Port),
Custom House, Rajaji Salai, Chennai - 600 001.

2. The Customs Excise & Service,
Tax Appellate Tribunal,
WTC Building : FKCCI Complex,
Kempegowda Road, Bangalore - 560 009.

+1cc to Mr. M. Rajendiran, Advocate SR.No. 21557

+1cc to Mr. A. P. Srinivas, Advocate SR.No. 21393

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and

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A.SK (04/04/2019)