

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.30146 of 2005

M/s.Mahavir Trading,
Rep. by its Proprietor
Mr.Ramesh Kumar Jain,
16-1-454, Achari Street,
Nellore - 524001.

...Petitioner

Vs

1. The Commissioner of Customs (Appeals),
Custom House, No.60, Rajaji Salai,
Chennai - 600001.
2. The Deputy Commissioner of Customs,
Group 7B-DEPB, Custom House,
No.60, Rajaji Salai,
Chennai - 600001.
3. The Assistant Commissioner of Customs,
(GR.7B-DEPB), Custom House,
No.60, Rajaji Salai, Chennai - 600001.

....Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the case in Order-in-Appeal No.C3/276/D/2005-Sea and C.Cus.No.513/2005, dated 05.08.2005, passed by the Commissioner of Customs (Appeals), Custom House, Chennai, the 1st respondent herein and to quash the same and consequently prayed for condoning the delay in filing the appeal before the 1st respondent and direct the Commissioner of Customs (Appeals), Chennai, the 1st respondent herein to dispose of the appeal on merits.

For Petitioner : Mr.K.Chozhan

For Respondent : Mr.T.Pramod Kumar Chopda, SSC

ORDER

The order passed in an application seeking to condone the delay of 273 days for filing an appeal against the Order-in-Original dated 07.05.2005, came to be rejected, on the ground that the proviso to Section 128(1) of the Customs Act, 1962 does not permit the Commissioner of Customs (Appeals) to condone the

delay exceeding 30 days. The reasoning given by the Commissioner has been sustained by the Hon'ble Supreme Court in a decision reported in 2008 (221) E.L.T. 163 (S.C.) in the case of Singh Enterprises vs Commissioner of Central Excise, Jamshedpur, stating that the Commissioner is not empowered to condone the delay that exceeds 30 days. As such, I do not find any infirmity in the impugned order of the Commissioner.

2. The learned counsel for the petitioner would submit that, even assuming that the Commissioner is not empowered to condone the delay, the High Courts, exercising its powers under Article 226 of the Constitution of India, can condone the delay in the interest of justice. In support of his contention, the learned counsel relied upon a Full Bench decision of the Hyderabad High Court reported in 2018 (361) E.T.T. 22 (A.P) in the case of Electronics Corporation of India Ltd. vs Union of India.

3. Mr.T.Pramod Kumar Chopda, Senior Standing Counsel, who appeared for the respondents, placed reliance on the decision of Singh Enterprises vs Commissioner of Central Excise, Jamshedpur, (supra) and submitted that the Hon'ble Supreme Court had taken into consideration of the fact that the High Court should also not entertain the request of condoning the delay in filing an appeal.

4. The Hon'ble Apex Court in various decisions reported in AIR 1958 SC 956 (Kerala Education Bill, 1957, Re); AIR 1980 SC 1789 (Minerva Mills vs Union of India); 1997 (3) SCC 261 (L.Chandra Kumar vs Union of India) and other decisions, have categorically taken a view that no law can take away or restrict the jurisdiction of the High Court under Article 226 of the Constitution of India and that such powers conferred on the High Court is part of inviolable basic structure of the Constitution.

5. The decision in Singh Enterprises vs Commissioner of Central Excise, Jamshedpur, (supra), does not lay down the law to the effect that the High Court is devoid of its powers under Article 226 of the Constitution of India for condoning the delay. As such, it cannot be said that the powers under Article 226 of the Constitution of India is restricted to condone the delay of this nature. However, such powers require to be exercised in the rarest of cases and very sparingly, which aspect has been reiterated in various decisions of the Hon'ble Apex Court. It would not be out of case to mention here that the question as to whether the case is of the rarest of the rare, could be determined only by the facts and circumstances of each and every case.

6. In the instant case, the petitioner challenges the impugned order, on the ground that the Order-in-Original was not served on them and in support of such a contention, reliance is placed on a batch of appeals filed against the Order-in-Original, on the same day, by different appellants and since the Order-in-Original was not served on the petitioner, he had not filed an appeal. In other words, the petitioner has attempted to draw an inference by a statement that, since the other appellants has preferred an appeal against the Order-in-Original and the non-filing of the appeal by the petitioner would substantiate that the order was not served on them. I am not in agreement with such a submission made.

7. Just because other appellants as well as the petitioner have filed certain appeals against the Orders-in-Original passed simultaneously with the present impugned order, it cannot be presumed that the Order-in-Original in the present case, was not served on the petitioner and the same cannot be cited as a sufficient cause for condoning the delay.

8. At this juncture, the learned Senior Standing Counsel for the respondents would submit that there is sufficient proof before them to substantiate that the Order-in-Original was duly served on the petitioner. This Court cannot loose sight on such an objection being made by the respondents counsel. As such, even on merits, the petitioner does not have a case.

9. For all the foregoing reasons, I do not find any reason to interfere with the impugned order. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

hvk

To

1. The Commissioner of Customs (Appeals),
Custom House, No.60, Rajaji Salai,
Chennai - 600001.
2. The Deputy Commissioner of Customs,
Group 7B-DEPB, Custom House,
No.60, Rajaji Salai,
Chennai - 600001.

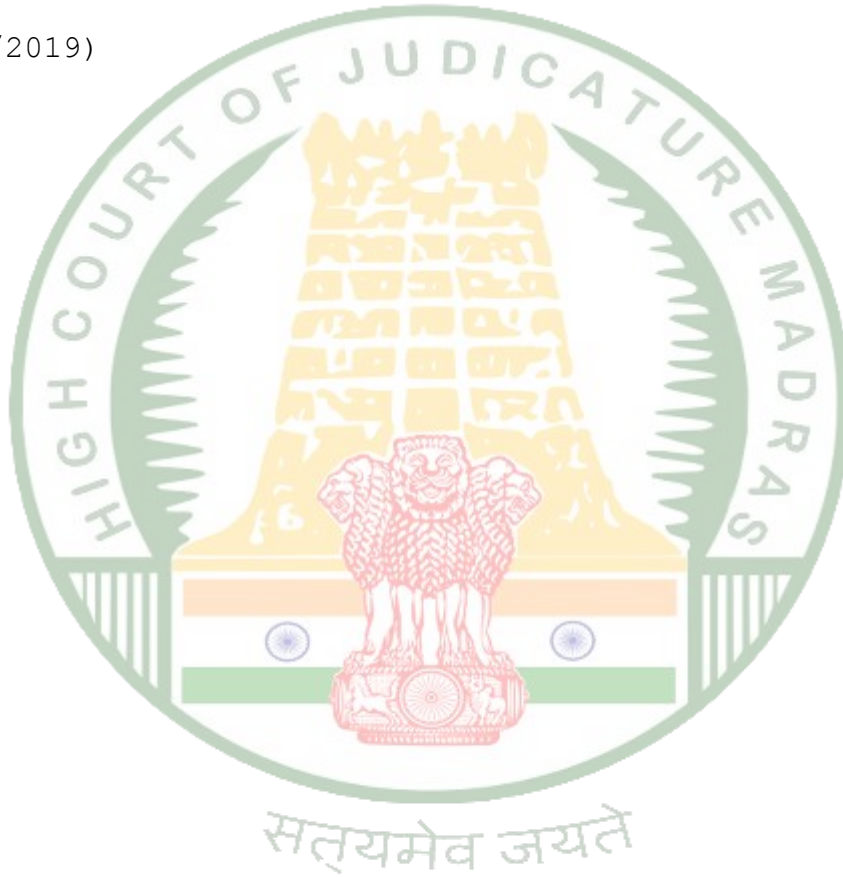
3. The Assistant Commissioner of Customs,
(GR.7B-DEPB), Custom House,
No.60, Rajaji Salai, Chennai - 600001.

+1cc to Mr.T.Pramod Kumar Chopda, Advocate SR.No.58209

+1cc to Mr.AK.Jayaraj, Advocate SR.No.57827

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NR(CO)
GMY(21/08/2019)



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