BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2019

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P(MD).No.4480 of 2015

S.Jeyapal ... Petitioner

Vs.

1.The Commissioner of Central Excise(Appeals),
Bibikulam, NMadurai - 625 002.

2.The Joint Commissioner of Central Excise(Adjudication),
Office of the Commissioner of Central Excise,
Central Revenue Buildings, Bibikulam, Madurai 625 002.

3.The Assistant Commissioner of Central Excise,
Virudhunagar Division,
Katchery Road,Virudhunagar - 626 001.

4.The Superintendent of Central Excise,
Virudhunagar I Rage,Katchery Road,
Virudhunagar - 626 001.

5.The Superintendent of Central Excise(Appeals),
Office of the Commissioner of Central Excise,
(Appeals-I) Coimbatore at Madurai,
Bibikulam,Madurai - 625 002. ... Respondents

Prayer :Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 10.02.2015 of the Fifth Respondent the learned Superintendent of Central Excise (Appeals), Madurai and quash the same and be pleased to direct the First Respondent learned Commissioner of Central Excise (Appeals) Madurai to dispose of the appeal dated 25.10.2012 filed by the petitioner.

For Petitioner : Mr.S.Renganathan

<u>O R D E R</u>

The point raised by the learned counsel for the petitioner is in relation to a communication dated 10.02.2015 wherein the first appellate authority under the Central Excise law states that the partner of a firm ought to have filed a separate appeal in relation to the levy of penalty upon him.

2. Admittedly, the partner has not filed a separate appeal but only signed the appeal in form common along with the firm, both challenging penalties imposed upon them. Admittedly, a separate ground of appeal has also been raised by the partner however in his individual capacity in the same grounds of appeal.

3. Learned counsel for the petitioner relies on a decision of a Division Bench of the Bombay High Court in the case of *Benu Ramesh Agarwal Vs. Commissioner of Central Excise reported n 2014(305) E.L.T 375 (Bom.)* wherein, the Division Bench held that, being a partnership firm, insisting upon the partner to file a separate appeal for levy of penalty would be hyper technical and that a joint memo of appeal would suffice to render both appeals maintainable.

4. Be that as it may, on merits it is an admitted position that the appeal filed before the first appellate authority is barred by limitation. The relevant statutory provisions require that an appeal be filed within a period of 60 days from date of receipt of the order of assessment with a further period of 30 days when delay may be condoned by the authority. In this case, the appeal has been filed beyond the period of 90 days and hence, has been rightly rejected by the appellate authority.

5.Thus even I were to, for a moment, accept the argument of the petitioner, on the first point, it would only be a paper victory. Hence, reserving the liberty of the petitioner to adjudicate this point in a better and more appropriate case, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar

To,

1.The Commissioner of Central Excise(Appeals),
Bibikulam, NMadurai - 625 002.

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Office of the Commissioner of Central Excise,
(Appeals-I) Coimbatore at Madurai,
Bibikulam,Madurai - 625 002.

+1 CC to M/s.S.RENGANATHAN, Advocate(SR-74701[F] dated 11/07/2019)

W.P(MD).No.4480 of 2015
10.07.2019

CM
MS/17.09.2019/3P.7C