

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 11638 of 2016
and
W.M.P. No. 10047 of 2016**

Sheik Mohammed Rafique Ahmed
S/o. Ahmed Shamsher Shaik
Flat No.10, Pranali Society
Veer Savarkar Nagar
Jail Road, Nasik Road, Nasik
Maharashtra – 422 101.

... Petitioner

-VS-

1. The Joint /Additional Commissioner
of Customs, Airport, Customs
Commissionerate, New Customs House
Meenambakkam, Chennai – 600 027.

2. The Commissioner of Customs
(Appeals-I), Customs House
No.60, Rajaji Salai
Chennai – 600 001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the First Respondent Order-in-Original No.318/11/9/2015 dated 11.09.2015 and quash the same is contrary to the orders of this Hon'ble Court in Writ Petition No. 25517 of 2015 and M.P. No.1 of 2015 dated 24.11.2015, one passed in clear violation of the principles of natural justice.

For Petitioner : Dr. S.Krishnandh
For Respondents : Mr. S.Rajasekar
Standing Counsel

ORDER
(through video conference)

Heard Dr. S.Krishnandh, Learned Counsel for the Petitioner and Mr. S.Rajasekar, Learned Standing Counsel appearing for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by Order-in-Original No.318/11/9/2015 dated 11.09.2015 had passed an order under the provisions of the Customs Act, 1962 (hereinafter referred to as the 'Act' for short), against the Petitioner, who received the copy of that order on 06.10.2015. The Petitioner was entitled to prefer appeal against that order under Section 128 of the Act, within a period of 60 days from the date of its receipt before the Commissioner of Customs (Appeals), who has been empowered to condone delay in filing such appeal for an extended period of 30 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before that Appellate Authority, but has instead filed this Writ Petition

on 28.03.2016 challenging the order passed by the Respondent beyond the maximum limitation period of 90 days from the date of receipt of copy of that order.

3. The Hon'ble Supreme Court of India in ***Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited*** (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority. Having regard to that legal position, it is not possible for this Court to express any view on the correctness or otherwise on the merits of the controversy involved in the matter.

4. It is contended by the Learned Counsel for the Petitioner that the Petitioner had earlier filed another Writ Petition in W.P. No. 25517 of 2015 for provisional release of the seized goods, which was dismissed by this Court by order dated 24.11.2015 with an observation that the First Respondent, shall complete the adjudication after affording an opportunity of personal hearing to

the Petitioner within a period of eight weeks from the date of receipt of copy of that order, but neither the Petitioner nor the Respondent had then brought to the notice of the Court that the impugned order had already been passed on completion of such adjudication. Such failure of the parties does not, by any stretch of imagination, invalidate the impugned order for that reason or extend the time limit to challenge the impugned order before the proper forum in the manner recognized by law.

5. Accordingly, the Writ Petition, which cannot be entertained, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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23.11.2020

Index: Yes/No

Note: Issue order copy by 14.12.2020.

To

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of Customs, Airport, Customs
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No.60, Rajaji Salai, Chennai – 600 001.

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P.D. AUDIKESAVALU, J.

Maya



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WEB COPY

Dated : 07.12.2020