

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.15073 of 2012
and M.P.No.1 of 2012

M/s.Parrys Enterprises India Limited
Dare House, 2, NSC Bose Road,
Chennai 600 001

...Petitioner

vs.

1.The Assistant Commissioner
of Customs (Refunds),
Customs House,
Chennai - 600 001.

2. The Commissioner of Customs (Appeals)
Customs House, Rajaji Salai,
Chennai - 600 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the proceedings initiated vide show cause notice issued by the first respondent from file F.No.S24/SAD/1017/11-Ref dated 19.01.2012 and ii) the records of the appeal proceedings initiated by the first respondent on 19.01.2012, pursuant to review order 549/2011 dated 18.11.2011 of the Commissioner of Customs (Exports and pending on the file of the second respondent and quash the proceedings of the show cause notice dated 19.01.2012 pending on the file F.No.S24/SAD/1017/11-Ref on the first respondent.

For Petitioner : Ms.Anuradha P.M.
For Respondents : Mr.V.Sundareswaran
Sr.Standing Counsel.

O R D E R

Heard the learned counsel for the petitioner and the respondents. I have also perused the evidence on record.

2. In the present Writ Petition, the writ petitioner has challenged the impugned Show Cause Notice dated 19.01.2012 bearing reference F.No.S24/SAD/1017/11-Ref and the records of appeal proceedings initiated by the 1st respondent pursuant to the Review Order No.549/2011 dated 18.11.2011 of the Commissioner of Customs (Exports) which was pending before the 2nd respondent and the writ petitioner prayed for quashing the said proceedings.

3. During the pendency of the present Writ Petition, the appeal filed by the 1st respondent before the 2nd respondent Commissioner of Customs (Appeals) against the Order-in-Original No.17230/2011 dated 10.08.2011 came to be disposed by an order dated 27.01.2014 of the 2nd respondent vide Order-In-Appeal C.Cus. No.90/2014. The said appeal filed by the 1st respondent before the 2nd respondent has held to be beyond the limitation prescribed under Section 129D(4) of the Customs Act, 1962 with the following observations:-

I have carefully gone through the case records and submissions made. Section 129D(4) clearly specifies that an application to the Commissioner (Appeals) should be made within a period of one month from the date of the communication of the order passed under sub-section (2) of Section 129D of the Customs Act, 1962. In this case, the Order-in-Original was passed on 29.08.2011. The Review Order of the Commissioner of Customs (Exports) was passed on 18.11.2011 under Section 129D(2) of the Customs Act, 1962 and the same has been received by the Department on 20.11.2011. The appeal was filed under Section 129D(4) on 19.01.2012. Hence, there is a delay under Section 129D(4) of the Customs Act, 1962 in filing the appeal.

In view of the above facts, I refrain from going into the merits of the case and the Departmental Appeal is dismissed for non-compliance of the provisions of Section 129D(4) of the Customs Act, 1962.

4. Thus, the impugned Show Cause Notice dated 19.01.2012 issued by the 1st respondent pursuant to the review order dated 18.11.2011 in Review Order No.549/2011 also cannot be sustained.

5. In the light of the above, this Writ Petition filed by the petitioner is liable to be allowed as substratum of demands in the impugned Show Cause Notice dated 19.01.2012 pursuant to the Review Order No.549/2011 dated 18.11.2011 of the same officer as

the Commissioner of Customs (Exports) has been set at naught by the same officer while passing the order dated 27.01.2014 in Order-In-Appeal C.Cus. No.90/2014.

6. This Writ Petition is thus allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

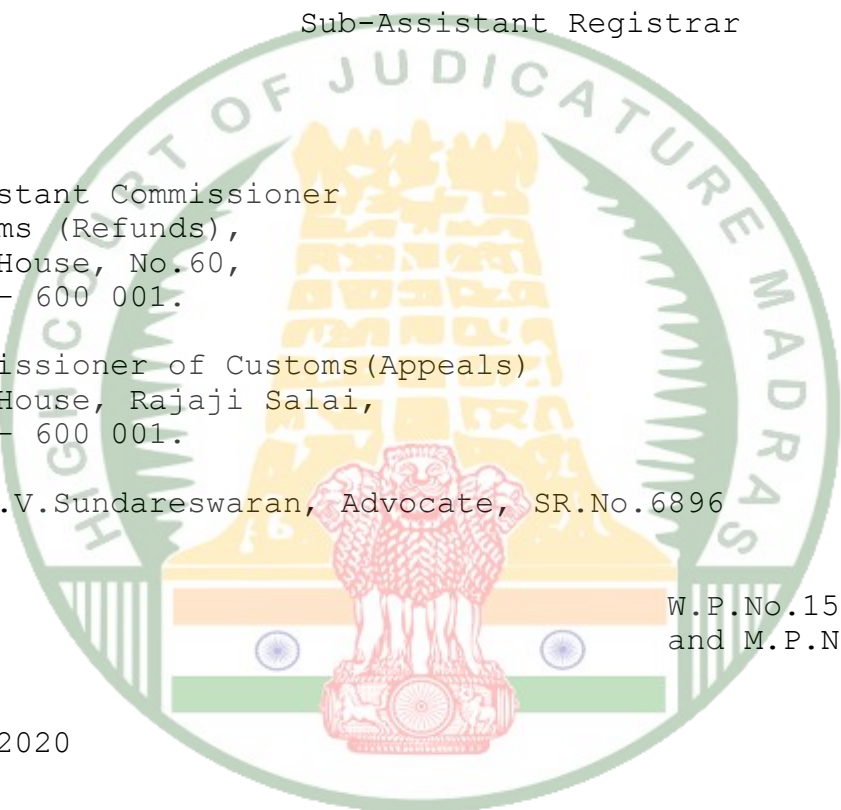
1.The Assistant Commissioner
of Customs (Refunds),
Customs House, No.60,
Chennai - 600 001.

2.The Commissioner of Customs(Appeals)
Customs House, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.V.Sundareswaran, Advocate, SR.No.6896

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SPD(CO)
KKV/09/12/2020



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