IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM

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

W.P. No. 1714 of 2017

M/s. Deccan Organics,
Rep. by its Authorized Signatory,
Shri. V.Harinarayanan,
1-8-156/160/10, Prandergchast Road,
Secunderabad - 500 003. ... Petitioner

-vs-

The Assistant Commissioner of Customs (Refund-Sea),
Custom House,
No. 60, Rajaji Salai,
Chennai - 600 001. ... Respondent

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 Respondent leading to issuance of Order - in - Original No. 45453/2016 dated 08.03.2016 issued in F. No. S24/SAD/4003/15-Refunds-S25/SAD/1059/16 and quash the same for being contrary to the statutory provisions more particularly, Section 3(5) of the Customs Tariff Act, 1975.

For Petitioner : Mr. G.Derrick Sam
For Respondent : Mr. A.P.Srinivas, Standing Counsel

O R D E R
(through video conference)

Heard Mr. G.Derrick Sam, Learned Counsel for the Petitioner and Mr. A.P.Srinivas, Learned Standing Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by Order in F. No. S24/SAD/4003/15-REFUNDS dated 02.03.2016 had rejected the claim of the Petitioner under the provisions of the Customs Act, 1962 (hereinafter referred to as the 'Act' for short), which is claimed by the Respondent to have been despatched on 10.03.2016. Since the copy of the impugned order received from the Respondent has been produced, there cannot be any dispute in that regard. 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 (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 10.01.2017 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. In the result, the Writ Petition, which cannot be entertained, is dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vjt
To
The Assistant Commissioner of Customs (Refund-Sea),
Custom House,
No. 60, Rajaji Salai,
Chennai - 600 001.
Copy to
M/s. Deccan Organics,
Rep. by its Authorized Signatory,
Shri. V.Harinarayanan,
1-8-156/160/10, Pranderghast Road,
Secunderabad - 500 003.
+1 CC to Mr.A.P. Srinivas, Advocate sr 37729

W.P. No. 1714 of 2017

SR(CO)
SP(04/12/2020)