IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22587 of 2009
and
M.P.No.1 of 2009

P.M.Mohamed Ismail ...Petitioner

Vs

1.The Additional Commissioner of Customs
(Preventive)
Customs House,
Rajaji Salai, Chennai – 1.

2.The Appellate Tribunal for Foreign Exchange,
Ministry of law, Justice and Company affairs,
4th floor, B Wing, Government of India,
Jan Path Bhawan, Jan Path,
New Delhi – 110 001.
Represented by its Registrar. ...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in and connected with order in appeal No.882 of 2004 dated 16.03.2007 in F.No.T-4/2-M/99 passed by the second respondent and quash the same and consequently directing the second respondent to hear the appeal on merits after condoning the delay in filing such appeal.

For Petitioner : Mr.B.Sathish Sundar

For Respondents : Mr.A.P.Srinivas
Senior Standing counsel
[For R1]
R2 - Tribunal

O R D E R

The order passed by the Appellate Tribunal for Foreign Exchange in Appeal No.882 of 2004 dated 16.03.2007 is under challenge in the present writ petition.

2. The learned counsel for the petitioner mainly contended that the Tribunal rejected the appeal on the ground of delay in filing the appeal. The petitioner further contended that the

delay is about 100 days and therefore, the delay ought to have been condoned by the Tribunal and the issues raised are to be adjudicated on merits. Contrarily, the appeal filed by the petitioner was rejected merely on the ground of delay, which caused hardship to the petitioner.

3. Perusal of the affidavit would reveal that the order passed by the Tribunal is to be challenged by way of filing a Civil Miscellaneous Appeal before the High Court under the provisions of the Act. The petitioner has rightly filed C.M.A. before this Court in C.M.A.SR.No.34541 on 26.04.2007. The appeal was returned by the Registry on 16.05.2007 for want of certain compliance of the defects noted in the file case papers. The petitioner has narrated certain discussions with their counsel regarding the defects raised by the Registry and contended that the petitioner has not pursued the said C.M.A filed by the petitioner, challenging the very same impugned order passed by the Tribunal in Appeal No.882 of 2004.

4. It is not in dispute that against the order passed by the Appellate Tribunal for Foreign Exchange, C.M.A is entertainable by the Hon'ble High Court and the matters are to be listed before the Hon'ble Division Bench of this Court. Rightly, the petitioner has filed the C.M.A, but not pursued the matter. Since because the petitioner has not pursued the C.M.A, the writ petition filed thereafter, cannot be entertained. The jurisdiction vested under the provisions of the Act cannot be altered or usurped by way of entertaining a writ petition under Article 226 of the Constitution of India. It is not the case, where the writ petition is not mistakenly filed. As rightly advised, the petitioner filed C.M.A but not pursued, for which, the petitioner alone is to be blamed. However, it is for the petitioner to pursue the C.M.A already filed by following the procedures as contemplated. However, the writ petition filed against the very same order, which is under challenge in respect of the C.M.A filed, cannot be entertained in the present writ proceedings filed under Article 226 of the Constitution of India. Thus, the petitioner is at liberty to pursue the C.M.A already filed in the manner known to law.

5. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Commissioner of Customs
(Preventive)
Customs House, Rajaji Salai, Chennai - 1.

2. The Registrar,
The Appellate Tribunal for Foreign Exchange,
Ministry of law, Justice and Company affairs,
4th floor, B Wing, Government of India,
Jan Path Bhawan, Jan Path, New Delhi - 110 001.

+1cc to Mr.B.Sathish Sundar, Advocate, S.R.No.41539
+1cc to Mr.A.P.Srinivas, Senior Standing Counsel, (Customs, Central Excise & Service Tax) Advocate, S.R.No.41705

W.P.No.22587 of 2009

AD(CO)
GN(14/09/2021)