IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

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THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.Nos. 28526 & 28527 of 2010

and M.P.Nos.1, 2 of 2010

M/s.KKSK Leather Processors Pvt. Ltd.,
R.N.Pudur, Bhavani Main Road,
Erode - 638 005. ... Petitioner in both W.Ps

Vs

1. The Customs Excise and Service
   Tax Appellate Tribunal,
   South Zonal Bench at Chennai,
   Sasthri Bhavan Annex, 1st Floor,
   26, Haadaows Road,
   Chennai - 600 006.

2. Commissioner of Customs and
   Central Excise,
   No.1, Foulk's Compound,
   Annai Medu, Salem - 636 001. ... Respondents in both W.Ps

Prayer in W.P.No.28526 of 2010: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarifed Mandamus, to call for the records of the case in impugned order in Misc.Order No.353 of 2010 read with Final Order No.826 of 2010 dated 29.07.2010 in Appeal No.ST/320/2010 passed by the 1st respondent herein and to quash the same and consequently direct the 1st respondent to condone the delay of 107 in filing the above appeal, restore the above appeal to its original number and dispose of the appeal on merits.

Prayer in W.P.No.28527 of 2010: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarifed Mandamus, to call for the records of the case in impugned order in Misc.Order No.354 of 2010 read with Final Order No.827 of 2010 in Appeal No.ST/321/2010 passed by the 1st respondent herein and to quash the same and consequently direct the 1st respondent to condone the delay of 107 in filing the above appeal, restore the above appeal to its original number and dispose of the appeal on merits.

For Petitioner : Mr.T.Ramesh
(in both W.Ps)

For Respondents : Mr.A.P.Srinivas
(in both W.Ps) Senior Standing Counsel

COMMON ORDER

By this common order both the writ petitions are being disposed of.

2. The petitioner has challenged the impugned orders dated 29.07.2010, passed by the 1st respondent/Customs Excise and Service Tax Appellate Tribunal.

3. By the impugned order, the Tribunal has dismissed the application filed by the petitioner for condonation of delay in filing the appeal with the following observations:-

> "2. Heard both sides. The above explanation is totally insufficient to condone the delay. The assessee's is a private limited company and therefore, the resignation of the concerned official dealing with excise matters does not mean that no one else could not have filed the appeal within time. The COD applications are therefore dismissed. As a result, both the appeals are dismissed as barred by limitation."

4. The learned counsel for the petitioner placed reliance on the decision of this Court in M.M.Engineers Pvt. Ltd., Vs CESTAT, Chennai, (2018) 362 E.L.T. 397 (Mad), wherein this Court observed that 106 days of cannot be construed to be an inordinate delay especially when the respondents do not allege that the petitioner has purposely not filed the appeal in time and had filed appeal with a delay of 106 days only to drag on the proceedings.

5. Defending the impugned order, the learned counsel for the respondents submits that the petitioner has alternate remedy by way of appeal before this Court and by way of Civil Miscellaneous Appeal. He therefore submits that the writ petitions are liable to be dismissed.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

7. In my view also the delay of 107 days is not inordinate for the 1st respondent/Appellate Authority to dismiss the appeal as the precious rights to agitate the issue arising out of the order passed by the 2nd respondent/Commissioner of Customs and Central Excise, Salem cannot be denied to the petitioner unless there is an inordinate delay which has not been answered properly and condonation of the delay will cause prejudice to the interests of the revenue. The alternate submission of the learned counsel for the respondents that the remedy lies by way of an appeal before this Court against the order of the 1st respondent/Appellate Authority under Section 35G of the Central Excise Act, 1944 also cannot be countenanced as the jurisdiction of the Court under Section 35G of Central Excise Act, 1944 can be invoked only where there is substantial question of law.

8. In the light of the above discussion, I set aside the impugned orders with a consequential direction to the 1st respondent/Appellate Authority to number the appeals and dispose the same on merits in accordance with law.

9. These Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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2. Commissioner of Customs and Central Excise,
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(CO)
SM/19/02/2021

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