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W.P.No. 18466 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.18466 of 2020 &
WMP.Nos.22908 & 22909 of 2020

N.R.Colours Limited
Rep by its Managing Director
Nirav Raveshia,
202/A, Flying Colours,
Dindayal Upadhayay Marg
LBS Road, Mulund (West)
Mumbai-400 080.

...Petitioner

Vs.

- 1.The Commissioner of Customs (Imports)
Custom House, Rajaji Salai
Chennai-1
- 2.The Commissioner of Customs (Appeals) II
Custom House, Rajaji Salai
Chennai-1
- 3.The Additional Commissioner of Customs (Group 2)
Custom House, Rajaji Salai,
Chennai-1

...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records pertaining to the order of the 3rd respondent dated 19.7.2012 passed in Order in Original No. 19178/2012 and the order of the 2nd respondent dated 5.8.2020 passed in Order in Appeal Seaport C. Cus. No.891/2020 and quash the same.

For Petitioner : Mr.R.Abdul Mubeen



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For Respondents : Mr.T.Pramod Kumar Chopda,
Senior Standing Counsel

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ORDER

Heard Mr.R.Abdul Mubeen, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned Senior Standing Counsel for the respondents.

2. A memo is filed today by the petitioner pointing out an error in the cause-title. The petitioner arrayed is '*N.R.Colours Private Limited*'. However, the entity upon whom the impugned order has been passed is '*N.R.Colours Limited*', the transferee company in Company Petition No.97 of 2011 before the Bombay High Court.

3. Both learned counsel would agree that this error must be corrected. Hence, taking the memo on file, the cause-title stands amended to reflect the name of the petitioner as '*N.R.Colours Limited*'.

4. The petitioner has challenged an order passed by the first Appellate Authority under the Customs Act, 1962 (in short 'Act') rejecting the appeal of the petitioner on the ground that the same is barred by limitation and has been filed beyond the statutory period provided.

5. Admittedly, the order-in-original is dated 19.07.2012. However, it is the case of the petitioner that the entity, as against which the order had been passed, had been amalgamated with the petitioner and hence, the



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assessee, N.R.Chemicals Private Limited, ceased to exist on and from 06.05.2011. Admittedly, the order has been served in the name of the erstwhile entity, to its address.

6. Thus, the case of the petitioner to the effect that order had come to its notice only when a detention notice had been issued on 12.03.2019 is acceptable. On 19.06.2019, upon request made by the petitioner, the Deputy Commissioner of Customs has supplied a copy of the order-in-original paving the way for the filing of appeal before the first Appellate Authority.

7. In such circumstances, I am of the considered view that the intervening period is liable to be eschewed in the computation of statutory limitation for filing of appeal. Since the order has been received by the petitioner on 19.06.2019 and the appeal has been filed on 20.06.2019, there is, in my considered view, no delay.

8. Hence, the impugned order passed by the 2nd respondent on 05.08.2020 is set aside and the appeal is restored to the file of the 2nd respondent to be heard on merits and in accordance with law. As far as the order-in-original is concerned, it transpires that notices have been issued to the assessee in 2010, even prior to the amalgamation. Thus, I am not inclined to set aside the order-in-original and leave all grounds open for the petitioner to agitate in first appeal.



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9. There is some discrepancy in the address of the petitioner, insofar as the cause-title reveals the address of the petitioner to be '*202/A, Flying Colours, Dindayal Upadhayay Marg, LBS Road, Mulund (West), Mumbai-400 080*' but the scheme of amalgamation reveals the registered office as '*248, Shanti Industrial Estate, S.N. Road, Mulund (W), Mumbai-400080*'. Thus, and to ensure compliance of this order, a date of hearing of the appeal is fixed.

10. The petitioner will appear before the Commissioner of Customs (Appeals)/R2 on Friday, the 2nd of December, 2022 at 10.30 a.m. and the appeal shall be disposed within a period of four weeks thereafter, after hearing the petitioner.

11. This writ petition is disposed as above. Connected miscellaneous petitions are closed. No costs.

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Index : Yes/No

Speaking Order



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DR.ANITA SUMANTH, J.
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