



W.P.(MD) No.4509 of 2015.

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.4509 of 2015

and

M.P.(MD) No.1 of 2015

The Central Public Information Officer/
Assistant Commissioner of Central Excise,
Tuticorin Division,
CBEC, Central Excise,
C-50, SIPCOT Industrial Complex,
Tuticorin 628 008.

... Petitioner

/vs./

1.The Information Commissioner,
Central Information Commission,
Room No.308, 2nd Floor,
August Kranti Bhawan,
Bhikaji Cama Place,
New Delhi 110 066.

2.D.Dhayadevadas

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned



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order dated 24.02.2015 in File No.CIC/KY/A/2014/001087 passed by the 1st respondent and quash the same.

For Petitioner : M/s.S.Ragaventhree

For R1 : Mr.P.Subbiah
Central Government Senior Panel Counsel

For R2 : Mr.S.Ramakrishnan

ORDER

The instant writ petition has been filed challenging the order of the first respondent, wherein he had directed the petitioner to furnish the information, in respect of which the petitioner had rejected the request of the second respondent herein.

2.Heard M/s.S.Ragaventhree, learned counsel for the petitioner, Mr.P.Subbiah, learned Central Government Senior Panel Counsel and Mr.S.Ramakrishnan, learned counsel for the second respondent.

3.M/s.S.Ragaventhree, learned counsel for the petitioner would submit that the first respondent had issued a notice on 06.02.2015, which had been received



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only by the office of the petitioner on 23.02.2015. Hence, they were not able to attend the enquiry on 24.02.2015. She would further submit that as against the rejection of order passed by the petitioner, the second respondent had filed an appeal before the Deputy Commissioner of Central Excise/the appellate authority under the Right to Information Act, 2005. However, without waiting for any further order from the appellate authority, the second respondent had approached the first respondent on 28.01.2014. The first appellate authority, in fact, had passed an order on 03.02.2014. These were all not placed before the first respondent while considering the application.

4. According to her, the reason assigned by the first respondent is that even in spite of 26 months having been passed from the date of the application, the same has not been replied to. This finding of fact is not correct. The request of the second respondent was rejected by the petitioner on 08.11.2013 and the first appellate authority had rejected the request on 03.02.2014. Hence, on that ground alone, the impugned order is liable to be set aside.



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5.Mr.P.Subbiah, learned Central Government Senior Panel Counsel for the first respondent would contend that there was no material available on record with the first respondent to show that the request of the second respondent has been rejected by the petitioner or the first appellate authority. Therefore, in that context, the said order has been passed. Since no order has been passed, the first respondent had passed the impugned order.

6.Mr.S.Ramakrishnan, learned counsel for the second respondent would submit that even though the second respondent has filed an appeal before the first appellate authority on 29.11.2013 against the order of rejection of the petitioner dated 08.11.2013, the first appellate authority had not passed any order within the prescribed period of 30 days and therefore, he had preferred the second appeal before the first respondent. Hence, he would plead that since the first appellate authority had not disposed of the appeal, the appeal filed by the second respondent was well within the ambit of Section 19 (3) of the Right to Information Act, 2005 and the first respondent had passed an order, which cannot be found fault with.



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7.I have considered the rival submissions made by the learned counsels appearing on either side.

8.A reading of the order impugned in this writ petition would show that the first respondent had allowed the second appeal filed by the second respondent on the ground that he had not been supplied with the information that he had sought for under the Right to Information Act, 2005. There is no other reason that has been assigned by the first respondent. While narrating the facts, the first respondent had noted that the petitioner's response was not on record and the the first appellate authority was also not on record. But however, he had noted that the first appeal and the grounds of second appeal were on also record. I have also perused the grounds of the second appeal.

9.In the memorandum of second appeal, the second respondent has in clear terms stated that the petitioner herein had rejected the request of the second respondent and being aggrieved against the same, he has preferred an appeal to the Deputy Commissioner of Central Excise, who is the first appellate authority. It is also seen that the petitioner had annexed the order passed by the petitioner



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dated 08.11.2013 along with memorandum of appeal before the first respondent.

When that be so, the recording of fact by the first respondent that the order passed by the petitioner was not on record itself is erroneous.

10.Further, even in the memorandum of appeal, the first respondent had stated the reasons, on which the petitioner had rejected the claim of the second respondent and he had raised grounds as to why such rejection is bad. All these aspects have not been considered by the first respondent. When the materials were before him, it is not open to him to shun away from the materials and pass orders on its whims and fancies.

11.In the light of the aforesaid findings, I am inclined to interfere with the order passed by the first respondent and the same is liable to be set aside. Further, a similar request by the second respondent has also been made, which had been rejected by the petitioner and has been upheld by the first appellate authority. Against the said order also, the second respondent had preferred the second appeal to the first respondent and that appeal had been rejected by the second respondent upholding the orders passed by the first appellate authority and the



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petitioner. In the light of the said factual event, I also do not propose to remit the matter back to the first respondent for further adjudication.

12.In fine, the Writ Petition is allowed. The order passed by the first respondent in File No.CIC/KY/A/2014/001087 dated 24.02.2015 is set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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K.KUMARESH BABU, J.

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