



W.P.No.28604 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.28604 of 2022
and
W.M.P.No. 28154 of 2022

M/s.JEM Shipping Services,
Represented by M.V.Mahesh,
Partner,
No.1, Moore Street,
Chennai 1.

... Petitioner

Vs.

- 1.The Commissioner (Appeals-1),
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 34.
- 2.The Assistant Commissioner,
Egmore Division,
Chennai North Commissionerate,
Newry Towers, Plot No.2054,
12th Main Road, 2nd Avenue,
Anna Nagar, Chennai 40.

... Respondent



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Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in order in appeal No.164/2023 (CTA-I) dated 24.05.2023 and quash the same as being without jurisdiction and violative of Principles of Natural Justice and hence invalid and illegal, and further to direct the 1st respondent to pass order afresh on merits after grant of hearing to the petitioners.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.A.P.Srinivas,
Senior Standing counsel

ORDER

This writ petition has been filed challenging the order passed by the first respondent in Appeal No.164/2023 (CTA-I) dated 24.05.2023 and to direct the first respondent to pass order afresh on merits.

2. Mr.A.P.Srinivas, learned Senior Standing counsel, takes notice on behalf of the respondents. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.



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3. The learned counsel appearing for the petitioner would submit that initially, he filed a writ petition in W.P.No.20928 of 2022 for the following reliefs:

“To call for the records on the files of the respondent in Order-in-Original No. 61 / 2022 (Adjn) / C.Ni.IV/16/31/20-Adjn (DIN- 20220659TK000091919B) dated 01.06.2022 and quash the same as being violative of principles of natural justice and barred by limitation and hence invalid and illegal.”

4. In the said matter, this Court had passed the following order:

“Learned counsel for the petitioner seeks permission to withdraw this writ petition with liberty to file a statutory appeal. He has also made an endorsement to that effect.

2. In the light of endorsement made, this writ petition is dismissed as withdrawn granting liberty to the petitioner to file an appeal within a period of four (4) weeks from today.

3. Appeal, if any, filed as aforesaid, shall be taken on file without reference to limitation but subject to



satisfaction of other statutory conditions, including pre-deposit. Connected with miscellaneous petitions are also dismissed.”

5. The learned counsel for the petitioner would submit that as per the direction of this Court, the petitioner had filed an appeal by speed post. The said appeal was dispatched on 14.09.2022 and the Department had received the same on 16.09.2023. Thereafter, the appeal was numbered and posted for hearing before the first respondent.

6. Further, the learned counsel would submit that the Appellate Authority/first respondent had also provided opportunity to the petitioner to argue the case on merits and under these circumstances, to the shock and surprise of the petitioner, the Appellate Authority had dismissed the appeal on the ground of limitation stating that there is a delay of two days in filing the appeal. However, the ground of limitation was not at all raised or argued before the Appellate Authority and it was also not considered at the time of filing the appeal.



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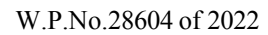
7. Both the learned counsel had referred to the order passed by this

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Court in ***Hyundai Motor India Limited vs. Revisional Authority*** reported in ***2014 (304) E.L.T. 527 (Mad)*** wherein it was held that if an appeal is filed by post and the date of dispatch of the appeal is within the period of limitation, the appeal should be treated as filed in time. In this regard, they had referred to paragraph No.7 of the said order, which reads as follows:

“7. However, in this case, I find that the revision has been dispatched on 08.01.2002, which is well within the period of limitation, and therefore, the revision filed by the petitioner should be treated as filed in time and the order of the first respondent deserves to be set aside and accordingly, it is set aside. The matter is remitted to the first respondent for passing orders on merits.”

8. Considering the submissions made by the learned counsel for the petitioner and the respondent, this Court is of the view that when the petitioner was permitted to file an appeal, the respondents ought to have considered the question of limitation before numbering the said appeal. However, the respondents had accepted the appeal and numbered it and



9. In view of the above, the appeal is well within the period of limitation which aspect was not considered in proper perspective by the first respondent and hence, this Court is inclined to set aside the impugned order dated 24.05.2023. Further this Court directs the first respondent to consider the matter on merits after providing opportunity to the petitioner and pass orders in the said appeal preferably within a period of eight weeks from the date of receipt of copy of this order.



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10. With the above direction, this writ petition is disposed of.

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Consequently, the connected miscellaneous petition is also closed.

04.10.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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KRISHNAN RAMASAMY.J.,
nsa

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