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W.P.No12369 of 2024

Po m IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.12369 of 2024

and

W.M.P.Nos.13482 & 13487 of 2024

M/s. SLV Trading Company
rep. By its Proprietor S.L.Vijay,
No.9B, Sastri Nagar, C.Y.S. Road,
Mangalapuram, Perambur,
Chennai – 600 012.

...Petitioner

Vs.

1. The Commissioner of Customs (Appeals-II)
No.60, Rajaji Salai, Customs House,
Chennai – 600 001.
2. The Additional Commissioner of Customs (Gr.3)
Chennai II (Import) Commissionerate,
Rajaji Salai, Customs House, Chennai – 600 001.

...Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records pertaining to Order-in-Appeal No.C.Cu.II.No.355/2024 dated 09.04.2024 passed by the first respondent herein and to quash the same, insofar as the impugned order passed by the first respondent is without



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jurisdiction and authority of law and in clear violation of principles of natural justice and consequently, to direct the first respondent to decide the Appeal filed by the petitioner on merits.

For Petitioner : Mr.S.Baskaran

For Respondents : Mr.M.Santhanaraman
Senior Standing Counsel

Order

The challenge in this Writ Petition is to the Order-in-Appeal dated 09.04.2024, whereby, the Appeal filed by the petitioner has been rejected and to quash the same, and consequently, to direct the first respondent to decide the Appeal filed by the petitioner on merits.

2. Mr.S.Baskaran, learned counsel appearing for the petitioner would submit that aggrieved against the order passed by the second respondent dated 15.09.2023, the petitioner preferred an Appeal before the first respondent, however, the first respondent, by virtue of the order dated 09.04.2024, rejected the Appeal on the ground that the same has been filed beyond the period of limitation. The learned counsel submitted that though the order passed by the second respondent was dated 15.09.2023, the same



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was received by the petitioner only on 22.11.2023, therefore, the time for filing Appeal has to be reckoned from the date, on which, the order copy was received by the petitioner. Therefore, it is contended that the Appeal has been filed within a period of limitation on 12.02.2024, hence, the first respondent herein will have the power to condone the delay, however, the first respondent rejected the Appeal as time barred by wrongly taking into consideration the date of the order passed by the second respondent. Hence, the learned counsel for the petitioner prayed for setting aside the impugned order and to issue appropriate direction for taking up the Appeal filed by the petitioner on record and decide the same on merits.

3. Mr.M.Santhanaraman, learned Senior Standing Counsel for respondents would submit that the order passed by the second respondent dated 15.09.2023 has been dispatched on 25.09.2023, and the same reached the Perumbur Barrack on 27.09.2023, all these details have been clearly set out in the impugned order for rejection of the Appeal. However, when this Court posed a question as regards the availability of information with regard to the despatch details, the learned Senior Standing Counsel fairly admitted



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that the status of delivery of the order on the petitioner could not been ascertained, and hence, submitted that appropriate orders may be passed.

4. I have given due considerations to the submission made by both sides and perused the materials available on record.

5. On perusal of the records, particularly, the impugned order dated 09.04.2024, it is seen that, the order passed by the second respondent dated 15.09.2023, (against which Appeal has been preferred by the petitioner) has been dispatched on 27.09.2023, however, the respondent-Department is handicapped in regard to the despatch details, as to whether the same has been served on the petitioner on 27.09.2023, the date on which, according to the respondent-Department, the order was stated to have been reached the petitioner. Even when this Court posed a question to the learned Senior Standing Counsel for the respondents as regards the availability of information with regard to the despatch details, the learned Senior Standing Counsel fairly admitted that the status of delivery of the order on the petitioner could not been ascertained.



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5.1 Thus, the first respondent/Appellate Authority, in the absence of exact information available with regard to the dispatch details, whether the order passed by the second respondent was served on the petitioner or not, in a confused state of mind, refused to entertain the Appeal, by assuming, as if, the same is filed beyond the period of limitation, for which purpose, the first respondent has taken the date of the order passed by the second respondent (i.e. 15.09.2023) as the date for reckoning the number of days in filing the Appeal and arrived at a conclusion that there a delay of 23 days and that beyond the period of limitation i.e. 90 days, the Appellate Authority will have no authority to condone the delay in filing the appeal. Per contra, it is the contention of the petitioner that the order passed by the second respondent dated 15.09.2023 was itself received by the petitioner only on 22.11.2023 and upon receipt of the order copy, the petitioner took steps to prefer the Appeal on 12.02.2024, which is well within the period of limitation. Therefore, in the absence of exact information as regards the despatch details of the order passed by the second respondent dated 15.09.2023, this Court has to indispensably go by the details provided by the



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petitioner. Even assuming that the Appeal was filed beyond the period of limitation, the delay is nothing but merely 23 days, which can be condoned.

6. Thus, in the light of the aforesaid facts and circumstances of the case, this Court is inclined to condone to the delay and pass the following orders :-

- i) The Delay in filing the Appeal is condoned.
- ii) Consequently, the impugned order dated 09.04.2024 is set aside
- iii) The first respondent is directed to take up the appeal on record and dispose of the same in accordance with law, after providing an opportunity of personal hearing to the petitioner.

7. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, W.M.P.No.13482 of 2024, viz., the Dispense with Petition is concerned, the same is ordered and W.M.P.No.13487, the Stay



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Petition is closed.

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Index : yes/no

Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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