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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.29456 of 2024
and
W.M.P.Nos.32103, 32105 & 32106 of 2024

M/s.Aequitas Exports Private Limited,
Rep. by its Manager Admin Mr.Sudhakar,
102, 36, Pinnacle Road No.36,
Jubilee Hills, Hyderabad-500 033,
Telangana.
(Formerly located in Flat No.227, Block-D,
Punjag, Hyderabad 500 082, Telangana). ...Petitioner

And also having SEZ Factory Address at
Plot No.7, APIIC Building Products SEZ,
Annangi Village, Maddipadu Mandal,
Prakasam District 523 211,
Andhra Pradesh.

Vs.

1. The Commissioner of Customs (Appeals-II),
Custom House, 60, Rajaji Salai,
Chennai-600 001.

2. The Deputy Commissioner of Customs (BRC-DBK),
Chennai-IV Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai-600 001.

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3. The Assistant Commissioner of Customs,
Arrear Recovery Cell (Chennai-IV),
Custom House, 60, Rajaji Salai,
Chennai-600 001. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Order in Appeal No.313/2024 dated 02.04.2024 passed by the 1st Respondent and quash the same as arbitrary and illegal and re-consider the impugned order in Appeal No.313/2024 dated 02.04.2024.

For Petitioner : Mr.G.Gautham Ram Vittal

For Respondents : Mr.R.P.Pragadish,
Senior Standing Counsel

ORDER

Challenging the order dated 02.04.2024 passed by the first respondent, the petitioner has filed the present Writ Petition.

2. Mr.R.P.Pragadish, learned Senior Standing Counsel, takes notice on behalf of the respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the admission stage itself.

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4. The learned counsel for the petitioner submitted that, the show cause notices were issued to the petitioner-company for the period 2004 to 2014 to show cause as to why the amount paid as Drawback for the exported goods along with the applicable interest shall not be recovered in terms of Rule 16A(2) and (3) read with Customs, Central Excise Duties and Services Tax Drawback Rules, 1995 and why penalty should not be imposed under Section 117 of the Customs Act, 1962. Pursuant to which, the second respondent granted an opportunity of personal hearing to the petitioner, however, due to the Covid-19 pandemic, the petitioner failed to appear for the same, which led to the second respondent passing the ex-parte order vide Order-In-Original dated 27.04.2021. Being aggrieved over the said order passed by the second respondent, the petitioner has filed an appeal before the first respondent/Commissioner of Customs (Appeals-II), with a delay of 66 days and the same was rejected vide order dated 02.04.2024, on the ground that the appeal has been filed beyond the limitation period.

5. The main contention of the learned counsel for the petitioner is that since the impugned order was sent to old address of the petitioner company, as the petitioner was unaware of the same, he failed to file the appeal in time. He further submitted that since the assessment order is under challenge before the

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first respondent, he requested this Court to condone the delay in filing the Appeal and direct the Appellate Authority to consider and pass appropriate orders.

6. Mr.R.P.Pragadish, learned Senior Standing Counsel appearing for the respondents has no objection for condoning the delay and prays for appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned learned Senior Standing Counsel appearing for the respondents and also perused the materials available on record.

8. In the present case, the reason assigned by the petitioner for the delay in filing the appeal is that the petitioner was unaware of the impugned order since it was sent to its old address. In view of the settled proposition of law that when cause for substantial justice and technical considerations are pitted against each other, the cause of substantial justice should be given due weightage, this Court is inclined to condone the delay of 66 days in filing the Appeal before the Appellate Authority.

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9. Learned counsel on either side submitted that they will contest the case before the Appellate Authority. Under these circumstances, this Court is inclined to entertain this Writ Petition by remanding the matter to the Appellate Authority for passing appropriate orders.

10. Accordingly, this Court passes the following orders:

(i) The delay of 66 days in filing the appeal before the Appellate Authority is condoned and the order dated 02.04.2024, passed by the first respondent/Commissioner of Customs (Appeals-II) is set aside.

(ii) The first respondent/Commissioner of Customs (Appeals-II), is directed to take the appeal on record, if it is otherwise in order and pass appropriate orders on merits and in accordance with law, after providing an sufficient opportunity to the petitioner, as expeditiously as possible.

11. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

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Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
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Krishnan Ramasamy,J.,
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