IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2025

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.12398 of 2022
and
WMP No.11860 of 2022

The Commissioner of Customs,
Chennai II (Import Commissionerate)
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001 ... Petitioner

vs

1. The Customs Authority for
Advance Rulings,
New Customs House, Ballard Estate,
Mumbai – 400 001.

2. M/s. Netlink ICT Private Limited,
X/24/A/B/CRT Building Jupiter Jn,
Piravom Road,
Oliyappuram P.O.
Koothattukulam,
Ernakulam. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ, direction or order to call for the records of the first respondent in Ruling

No.CAAR/Mum/ARC/03/202 dated 20.01.2022 issued in Application No.CAAR/CUS.APPL/75/2021 O/o Commr.CAAR-MUMBAI and quash the same as ultravires of the Customs Act, 1962.

For Petitioner : Mr.K.S.Ramaswamy

For Respondents : No appearance for R1
Mr.Hredia.H.S. for R2

ORDER

This writ petition has been filed challenging the advance ruling order passed by the first respondent on the ground that the said order was obtained by the second respondent by fraud and misrepresentation of facts.

2. Admittedly, a statutory appeal under Section 28KA of the Customs Act, 1956 has not been filed by the petitioner, if aggrieved by the impugned order. Admittedly, there is a delay for the purpose of filing the statutory appeal. The said delay also cannot be condoned as per the statutory provision. Without exercising a statutory right of filing an appeal, if aggrieved by the impugned order, the petitioner has chosen to file this writ petition under Article 226 of the Constitution of India. Section 28KA of the Customs Act, which is a statutory appeal provision

for filing an appeal if aggrieved by the impugned advance order passed by the first respondent, read as follows:

> *"**28-KA Appeal** - (1) Any officer authorised by the Board, by notification, or the applicant may file an appeal to the High Court against any ruling or order passed by the Authority, within sixty days from the date of communication of such ruling or order, in such form and manner as may be prescribed:*
>
> *Provided that where the High Court is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period so specified, it may allow a further period of thirty days for filing such appeal.*
>
> *(2) The provisions of sections 28-I and 28-J shall, mutatis mutandis, apply to the appeal under this section."*

3. The learned counsel appearing for the respondent drew the attention of this Court to the order passed by a learned Single Judge of this Court in W.P.No.7905 of 2023 etc. batch dated 22.12.2023 and would submit that the learned Single Judge has elaborately discussed the maintainability of a writ petition filed beyond the prescribed time for filing a statutory appeal and in the said writ petition, it has been held that

the writ petition is not maintainable by observing as follows:

> a) Whether the importer had resorted to falsehood or obtained advance ruling through fraud or misrepresentation cannot be decided under the supervisory jurisdiction under Article 226 of the Constitution of India.
>
> b) Such power of correction is vested only with the High Court in its appellate jurisdiction under amended Section 28KA of the Customs Act, 1962.
>
> c) The jurisdiction of the High Court under Article 226 of the Constitution of India cannot be transformed into an appellate jurisdiction especially when the appellate remedy exists under the Statute, namely, Section 28KA of the Customs Act.

4. The learned counsel appearing for the respondent also placed on record, the Division Bench judgment of the Madras High Court dated 28.08.2024 in ***CMA.No.1827 of 2024*** in the case of ***M/s.Viewsonic Technologies India Private Limited vs. The Customs Authority for Advance Ruling and another*** and would submit that in the said Division Bench judgment, it has been made clear that since the appellate remedy has been provided under the Customs Act, 1962, the statutory appeal as

per the provisions of the Customs Act is alone maintainable. The law is now well settled that the writ petition is not maintainable when the prescribed period provided under the Statute namely, the Customs Act for filing the statutory appeal has got expired.

5. In view of the settled law as laid down in the aforesaid decisions, the question of entertaining this writ petition does not arise.

6. In the result, there is no merit in this writ petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.02.2025

Index : Yes / No
Speaking/Non-speaking order
vsi

To

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ABDUL QUDDHOSE,J.

vsi

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