



W.P(MD)No.13837 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.13837of 2025

and

W.M.P(MD)No.9995 of 2025

M/s.Sangeetha Tex,
Rep. By its Proprietor Mr.K.Subramanian,
No.11/14, P.V.G.Nagar, 40 feet Road,
Valayankadu, Gandhi Nagar Post,
Tripur – 641603.

... Petitioner

Vs.

1.The Commissioner of GST and C.EX (Appeals),
Coimbatore,
Circuit Office @ Trichy,
No.1 Williams Road, Cantonment,
Trichy - 620 001.

2.The Assistant Commissioner (BRC),
Office of the Commissioner of Customs,
Custom House, Tuticorin - 628 004.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned order passed by the first respondent vide his order in Appeal No.35/24-TTN(CUS)-APP dated 27.11.2024 and quash the same as it is illegal and in gross violations of the principles of natural justice.



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For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.R.Nandha Kumar
Standing Counsel

ORDER

The writ petition has been filed against the order in Appeal No.35 of 2024-TTN (CUS)-APP in Appeal.No.C24/78/2023-TTN (CUS) against order in Original No.821 of 2020, dated 22.09.2020 passed by the Assistant Commissioner of Customs, Custom House, Tuticorin.

2.The case of the petitioner is that the aforesaid order in Original No.821 of 2020, dated 22.09.2020 was received by the petitioner only on 16.02.2023. Since the petitioner propertier, namely, K.Subramanian was dealing with certain health issues, appeal could not be filed within the prescribed time under Section 128 of the Customs Act, 1962. It is submitted that the aforesaid appeal was rejected by the Appellate Commissioner on the ground of limitation. It is submitted that the petitioner has a very good case on merits. Therefore, the meritorious case is not to be rejected solely on the ground of limitation.



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3.The learned Standing Counsel for the respondents would submit that there is no merit in the present writ petition. It is submitted that the law has been settled by the Hon'ble Supreme Court in the case of *Singh enterprises Vs CCE* reported in *(2008) 3 SCC 70* and in the case of *CCE and Customs Vs.Hongo India (P) Limited* reported in *(2009) 5 SCC 791*. These decisions have been followed by the Hon'ble Supreme Court in several other cases and also by this Court. Therefore, the writ petition challenging the order of the Appellate Commissioner rejecting the appeal of the petitioner has to fail and he submits that the writ petition is liable to be dismissed.

4.Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

5.The writ petition filed by the petitioner as such is not maintainable as the order that has been passed by the Appellate Commissioner is strictly in accordance with the limitation prescribed under the Customs Act, 1962. Therefore, on this count, the impugned order passed by the Appellate Commissioner cannot be interfered with.



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6. The duty drawback is an export incentive and since the petitioner claims to be in possession of the relevant Bank Realization Certificate, this Court is inclined to rescue the petitioner. Considering the fact that the petitioner is willing to deposit the entire disputed amount of Rs.2,59,517/- being the duty drawback sanctioned to the petitioner, I am inclined to allow the writ petition by remitting the case back to the second respondent to pass fresh order. The petitioner shall deposit the entire amount of Rs.2,59,517/- within a period of thirty days from the date of receipt of a copy of this order. The petitioner shall also file requisite documents to substantiate that indeed the petitioner had received the exports made in respect of which the duty drawback was paid to the petitioner earlier. The petitioner shall co-operate with the respondents by filing the relevant Bank Realization Certificate to substantiate that the export made by the petitioner in respect of which the duty drawback was sanctioned has been realized. The amount to be deposited shall be refunded to the petitioner if the proceedings are dropped. Subject to the above, the impugned order stands quashed and the case is remitted back to the second respondent to pass fresh order.



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7.The writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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C.SARAVANAN, J.

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