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(2016) 10 MAD CK 0054

In the Madras High Court

Case No : Writ Petition Nos. 36582-36587 of 2016 and W.M.P. Nos. 31452-31454 of 2016

Ramki APPELLANT

Vs

Additional Commr. of Cus. (Pau), Chennai RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Citation : (2017) 346 ELT 225

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri Hari Radhakrishnan, Counsel, for the Petitioner; Shri G.M. Syed Nurullah Sheriff, SPC, for the Respondent

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J.—Mr. G.M. Syed Nurullah Sheriff, Senior Panel Counsel accepts notice for the respondents. Heard both.

2. The petitioners in these writ petitions are three in number namely Mr. Ramki, Mr. V. Ramachandran and Mr. Dilli Raju. In W.P. Nos. 36582, 36584 and 36586 of 2016, all the three petitioners have challenged the Orders-in-Original dated 17-12-2015, in and by which, 998 grams of foreign marked gold bars and crude gold bangles were confiscated under Section 111(d) of the Customs Act, 1962 read with relevant rules of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 and seizure of the garments, which were used for concealing the gold bars, were made apart from imposing penalty of Rs. 5 lakhs on each of the petitioners.

3. In W.P. Nos. 36583, 36585 and 36587 of 2016, the very same petitioners have challenged the Orders-in-Appeal passed by the Commissioner of Customs (Appeals) dated 18-7-2016, which were filed against the Orders-in-Original dated 17-12-2015. Therefore, the writ petitions challenging the Orders-in-Appeal namely W.P. Nos. 36583, 36585 and 36587 of 2016 are taken up for disposal in

the first instance.

4. In the orders impugned in W.P. Nos. 36583, 36585 and 36587 of 2016, the Commissioner of Customs (Appeals) held that the petitioners'' appeals are time-barred for the reason that the mandatory pre-deposit of 7.5% in terms of Section 129E of the Customs Act has not been made by the petitioners within the time permissible.

5. The only disputed fact is that the Orders-in-Original were passed on 17-12-2015 and received by the petitioners on 22-12-2015/21-12-2015. The Statute provides a period of limitation of 60 days to file appeals. However, the petitioners sent letters dated 16-2-2016 as if they are appeals. The office of the second respondent returned the same by a communication to the petitioners dated 19-2-2016 stating that the papers sent by the petitioners cannot be considered as appeals, because the same are incomplete and are not in proper format and that an appeal has to be filed in CA-I Form (copy enclosed), that the petitioners were directed to take note of Public Notice No. 166/2014, dated 5-11-2014 where under it has become mandatory to deposit 7.5% of the duty or penalty at the time of admission and the appeal period is 60 days from the date of receipt of the order and that since the appeals papers were sent by them beyond 60 days, delay condonation petitions had to be filed along with the appeal papers.

6. On receipt of the communication dated 19-2-2016, the only option available to the petitioners was to send the appeals in proper format and effect pre-deposit. However, without doing so, the petitioners presented the appeals in the proper format and filed a petition for dispensing with the mandatory condition of pre-deposit of 7.5%.

7. It appears that the petitioners were not aware of the fact that during the relevant point of time, the Statute stood amended and the erstwhile procedure of dispensing with the condition of pre-deposit was done away with and all the appeals were required to be filed with a proof of payment of pre-deposit of 7.5% of duty/penalty. But, yet the petitioners were harping upon the request for dispensing with the condition of pre-deposit stating various reasons. Ultimately, the Department, by a communication dated 26-5-2016, informed the petitioners that the system of filing waiver application in lieu of making of pre-deposit has been dispensed with, with effect from 6-8-2014.

8. As per the existing Rules, the proof of pre-deposit of 7.5% of the duty/penalty in the form of TR6 Challan has to be filed along with the appeal papers at the time of admission of the appeals. Therefore, the petitioners were advised to effect pre-deposit of 7.5% and produce proof in order to enable the office of the second respondent to register the appeals. After this communication, after about one month i.e. on 13-6-2016, the petitioners effected pre-deposit and produced proof of payment of such pre-deposits in the form of TR6 challans before the second respondent on 14-6-2016. However, as on 14-6-2016, the second

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respondent lost the power to entertain the appeals because the Statute provided only for a condonable period of 30 days over and above the period of 60 days. Therefore, the second respondent stated that he cannot entertain the appeals.

9. The argument advanced by the learned counsel for the petitioners is that presentation of appeals is different from admission of appeals and that the appeals having been presented within the condonable limit, the second respondent should not have refused to entertain the appeals.

10. From the facts and what is spelt out by the petitioners, it is evidently clear that on the date when the appeals were presented in the proper format on 17-3-2016, the appeals were time-barred. Though the period would have been within the condonable limit, the condonation of delay is not automatic. In terms of the provisions of the Statute, the appellant must show sufficient cause for not presenting the appeals within time and the Commissioner of Customs (Appeals) should be satisfied that the appellant was prevented by such sufficient cause. Thus, the argument that the presentation of the appeals in the proper format on 17-3-2016 was within the condonable limit is of no avail.

11. Admittedly, the payment of 7.5% of pre-deposit was effected only on 13-6-2016. As on that date, the Commissioner of Customs (Appeals) had no jurisdiction to entertain or admit the appeals. Therefore, the impugned orders are perfectly justified.

12. The learned counsel for the petitioners invited the attention of this Court to the circular issued by the Customs, Excise and Service Tax Appellate Tribunal dated 14-10-2014 and sought to impress upon this Court by contending that the Tribunal directed three opportunities/reminders be given so as to ensure that the pre-deposits are being done.

13. In my view, such a circular would not be a reason for this Court to issue a direction especially when the Statute does not empower the second respondent to condone the delay for more than 30 days. That apart, it has been held in several decisions that the Writ Court, exercising jurisdiction under Article 226 of the Constitution of India, cannot extend the period of limitation as prescribed under the Statute. Therefore, the only option available to the petitioners is to prefer appeals to the Customs, Excise and Service Tax Appellate Tribunal as against the orders passed by the Commissioner of Customs (Appeals).

14. In the light of the above, W.P. Nos. 36583, 36585 and 36587 of 2016 are held to be not maintainable and are accordingly dismissed. No costs.

15. However, it is open to the petitioners to file appeals before the Customs, Excise and Service Tax Appellate Tribunal as against the impugned orders.

16. In view of the orders passed in W.P. Nos. 36583, 36585 and 36587 of 2016, no orders are necessary in W.P. Nos. 36582, 36584 and 36586 of 2016 and these writ petitions are also dismissed granting liberty to the petitioners to file appeals as against the orders passed by the Commissioner of Customs (Appeals). No

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costs. Consequently, all connected pending WMPs are closed.

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