IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 8911 of 2015 (L)

PETITIONER(S):

MALABAR EXTRUSIONS PVT. LTD.,
ST.MARTIN COMPOUNT, PEPPATHY, VELIYANADU P.O.,
ARAKKUNNAM, ERNAKULAM, PIN- 682 319,
REPRESENTED BY ITS EXECUTIVE DIRECTOR JOJI AUGUSTINE.

BY ADV. SRI.MANUEL THOMAS.

RESPONDENT(S):
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1. UNION OF INDIA,
   REPRESENTED BY THE SECRETARY,
   MINISTRY OF FINANCE, NEW DELHI.

2. THE COMMISSIONER OF CUSTOMS,
   CUSTOMS HOUSE, WILLINGTON ISLAND, KOCHI-682 009.

3. THE COMMISSIONER OF CUSTOMS (APPEALS)
   CUSTOMS HOUSE, WILLINGTON ISLAND, KOCHI-682 009.

4. THE ASSISTANT COMMISSIONER (IMPORTS)
   CUSTOMS HOUSE, WILLINGTON ISLAND, KOCHI-682 009.

5. THE ASSISTANT COMMISSIONER OF CUSTOMS (REFUNDS)
   CUSTOMS HOUSE, WILLINGTON ISLAND, KOCHI-682 009.

BY ADVS. SRI.JOHN VARGHESE, SC.
SRI.THOMAS MATHEW NELLIMOOTTIL, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 8911 of 2015 (L)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT-P1: TRUE PHOTOSTAT COPY OF BILL OF ENTRY FOR HOME CONSUMPTION VIDE NO.6286579 DATED 19.03.2012.

EXHIBIT-P2: TRUE PHOTOCOPY OF CALCULATION STATEMENT OF EXCESS CUSTOMS DUTY DATED 21.05.2014 PREPARED BY THE PETITIONER.

EXHIBIT-P3: TRUE PHOTOCOPY OF ORDER DATED 11.04.2012 VIDE F.NO.S18/MISC/10/2012.R.CUS ISSUED BY 5TH RESPONDENT.

EXHIBIT-P4: TRUE PHOTOCOPY OF CUSTOMS APPEAL PREFERRED BY THE PETITIONER ON 08.05.2012 BEFORE THE 3RD RESPONDENT.

EXHIBIT-P4(A): TRUE PHOTOCOPY OF COVERING LETTER DATED 08.05.2012 SUBMITTED ALONG WITH THE EXT.P4 APPEAL.

EXHIBIT-P5: TRUE PHOTOCOPY OF ORDER DATED 01.06.2012 VIDE F.NO.AU/MISC/1/2010 PT. PASSED BY THE 3RD RESPONDENT.

EXHIBIT-P6: TRUE COPY OF THE LETTER DATED 11.09.2013 VIDE NO.MEPL/CUSTOMS/APPEALS TO THE 3RD RESPONDENT.

EXHIBIT-P7: TRUE PHOTOCOPY OF ORDER DATED 13.03.2014 ISSUED BY 3RD RESPONDENT.

EXHIBIT-P8: TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENTS IN WP(C).NO.16331/2014 DATED 12.08.2014 BEFORE THE HON'BLE HIGH COURT OF KERALA.

EXHIBIT-P9: TRUE PHOTOCOPY OF THE JUDGMENT DATED 17.09.2014 IN WP(C).NO.16331/2014 OF THE HON'BLE HIGH COURT OF KERALA.

EXHIBIT-P10: TRUE PHOTOCOPY OF ORDER DATED 04.12.2014 PASSED BY 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.8911 OF 2015 (L)

Dated this the 25th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P10 order passed by the 3rd respondent, purportedly in compliance with the directions issued by this Court in Ext.P9 judgment. The facts in the writ petition would disclose that the petitioner, who was aggrieved by an assessment in respect of the goods that were imported by him, and which assessment was done on the bill of entry that was presented by the petitioner for clearance of the goods for home consumption, had approached the 3rd respondent with Ext.P4 appeal, challenging the assessment done on the bill of entry. In the said appeal, the petitioner had also claimed a refund of the amounts paid in excess by the petitioner at the time of clearance of the goods. When that appeal was dismissed by the 3rd respondent, on the ground that it was not maintainable, the petitioner approached this Court through W.P.(C). No.16331/2014, which was disposed by Ext.P9 judgment directing the 3rd respondent to pass orders on Ext.P4 appeal, on merits, by referring to the contentions of the petitioner. Subsequent thereto, the 3rd respondent passed Ext.P10 order, dismissing the appeal, and consequently the claim for refund preferred by the petitioner, on the ground that Ext.P4 appeal was not maintainable at the instance of the petitioner. It is Ext.P10 order of the 3rd respondent that is impugned in the present writ petition.

2. I have heard the learned counsel appearing for the petitioner as also the learned Standing counsel appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P10 order passed by the 3rd respondent, the 3rd respondent has proceeded on the assumption that Ext.P4 appeal preferred by the petitioner, is one that was preferred against an order rejecting the claim of the petitioner for refund of duty, paid in excess by the petitioner. The presumption in Ext.P10 order is that, the petitioner had not challenged the original order of assessment done on the bill of entry filed by him before the customs authorities, and, hence, in the absence of a challenge to the assessment order, the petitioner could not maintain an application for refund of the duty paid by him in

excess. This erroneous assumption of the 3rd respondent appears to be the basis of Ext.P10 order passed by the 3rd respondent. In fact, Ext.P4 appeal preferred by the petitioner is one that impugns the assessment done, and is not against an order denying refund. In that view of the matter, pursuant to Ext.P9 judgment of this Court, the 3rd respondent was legally obliged to consider Ext.P4 appeal, preferred by the petitioner, on merits, by treating it as an appeal against an order of assessment, and to pass orders thereon. Inasmuch as that has not been done, I quash Ext.P10 order, and direct the 3rd respondent to pass fresh orders on Ext.P4 appeal, preferred by the petitioner, by treating the same as an appeal against an order of assessment done in respect of the petitioner. The 3rd respondent shall pass fresh orders, as directed, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

4. Standing counsel for the respondents would submit that in terms of Section 17 (4) of the Customs Act, 1962, it is the proper officer who is to reassess the duty levied on imported goods, if the self assessment is seen as not done correctly. On a reading of the said provision, I find that it deals with a situation where a proper officer

can, if circumstances exist, dispute the self assessment done by an importer, and proceed to reassess the goods based on the materials available with him. The said provision has no applicability on the facts of the instant case, since, admittedly there was an assessment done on the bill of entry filed by the petitioner, and an appeal filed against the said assessment before the 3rd respondent Appellate authority. In the light of the appeal filed by the petitioner, and the specific direction in Ext.P9 judgment to the 3rd respondent, to consider the appeal on merits and to pass orders thereon, I am of the view that the 3rd respondent will have to pass orders on merits, in the appeal preferred by the petitioner challenging the assessment.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp