IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.1477 to 1479 of 2015

M/s.Veetrag Enterprises,
Rep. By its Partner Mr.Nirmal Lunkad,
39/5, Ekambareshwarar Agraharam,
Park Town, Chennai - 600 003. ... Petitioner in W.P.No.1477/2015

Chetan Kumar Ranka, Partner,
M/s.Veetrag Enterprises,
39/5, Ekambareshwarar Agraharam,
Park Town, Chennai - 600 003. ... Petitioner in W.P.No.1478/2015

Nirmal Kumar Lunkad, Partner,
M/s.Veetrag Enterprises,
39/5, Ekambareshwarar Agraharam,
Park Town, Chennai - 600 003. ... Petitioner in W.P.No.1479/2015

Vs.

The Commissioner of Customs (Seaport Exports),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001. ... Respondent in all the writ petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus to call for the records of the respondent pertaining to the Order-In-Original No.30237/2014, dated 14.10.2014 and quash the same and forbear the respondent from proceeding with any recovery of the Adjudicated dues pursuant to the said Order-In-Original, as it is partisan, one sided and issued with a closed mind besides being passed in clear violation of the principles of natural justice.

In all the Writ Petitions:
For Petitioner :Mr.B.Satish Sundar
For Respondent :Mr.M.Devendran, Sr. Standing Counsel for customs, Excise & Service Tax Department.

COMMON ORDER

Challenging the order passed by the respondent in Order-In-Original No.30237/2014, dated 14.10.2014, the petitioner Company have filed the present writ petitions on the ground that the said order has been passed in violation of the principles of natural justice.

2. Learned counsel appearing for the petitioner submitted that the petitioner had imported 76 packages, namely, 3800 packets of Coated Gummed Paper at USD 11400.00 from M/s.Fancyco, China, vide Invoice No.FY122244, dated 19.11.2012 and thereafter, they have filed Bill of Entry No.8711998, dated 10.12.2012, for clearance of goods. Subsequently, an Officer from the respondent department assessed the duty at Rs.1,81,532/-, which was remitted by the petitioner on 10.12.2012. However, the petitioner was informed that the goods have been detained by the Directorate of Revenue Intelligence Officer. Therefore, the petitioner made a representation dated 12.01.2013 requesting the Assistant Director of Directorate of Revenue Intelligence to provisionally release the goods after drawal of the samples and weighment of goods. Even after their request to release the goods, there was no reply from the respondent, therefore, they were constrained to file Writ Petition No.3135 of 2013 before this Court seeking provisional release of the impugned goods in terms of Section 110A of the Customs Act, 1962. This Court, by order dated 19.03.2013, permitted to release the goods provisionally.

3. It is further submitted that similar to the above, they had also imported 26.00208 M/Tons of Tissue Paper at USD 10530.84 (CIF) Chennai from M/s.Fujian Tengsheng Trading Company Limited, China, vide Invoice No.TS2012165, dated 07.12.2012, and thereafter, they have also filed Bill of Entry No.8998733, dated 11.01.2013, claiming clearance of goods for Home Consumption. However, since the respondent, in spite several request from the petitioner, did not release the goods, they filed Writ Petition No.3655 of 2013 seeking to release goods pertaining to the Bill of Entry No.8998733, dated 10.01.2013. This Court, by order dated 02.04.2013, permitted the respondent to release the goods to the petitioner provisionally.

4. When the matter stood as above, the grievance of the petitioner is, they were called upon to show cause to the respondent as to why the declared descriptions in 29 Bills of Entry as mentioned in column No.9 of the Worksheet - I to this notice should not be held as mis-declared and incorrect and why they should not be amended in accordance with the description detailed in column No.16 of the Worksheet to the show cause notice. On receipt of the same, the petitioner's counsel also submitted letters dated 24.09.2013, 25.02.2014 and 24.05.2014 seeking to defer the date of personal hearing for cross-examination of 8 persons, namely, Praveen Kumar Jain of Mayur Paper Products, Mr.Vinod Kumar of Vardhman Papers, Mr.M.Siddharth Kumar of M/s.ML Oswal Enterprises, Mr.Mangi Lal of

Muthua Papers, Mr.Mahendra Bafna of Mahendra Paer, Mr.Vikram Banda of Prakash Paper, Mr.Ramesh Sudha of Tanot Papers and Mr.Raja of Mariappan Papers. However, the request of the petitioner to cross-examine the above said eight persons was not granted. Therefore, he contended, such approach of the respondent is contrary to the law laid down by this Court as well as the Apex Court, more particularly, latest judgment of the Apex Court in the case of Ayaaubkhan Noorkhan Pathan v. the State of Maharashtra and others ((2013) 4 SCC 465), wherein it is held that the rules of natural justice require that a party must be given the opportunity to adduce all relevant evidence upon which he relies and further that the evidence of the opposite party should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses would violate the principles of natural justice.

5. By relying upon yet another decision of the Gujarat High Court in the case of Vulcan Industrial Engineering Co. Ltd. v. Union of India (2013 (297) E.L.T. 190 (Guj.)), it is further contended that when it has been the settled legal position that any meaningful participation in the adjudicating proceedings can take place only after the cross-examination is granted to the other side, ignoring such principle, the respondent cannot proceed to decide the issue. In any event, if the respondent is of the opinion that the request for cross-examination was not tenable, by giving reasons, he could have rejected it. But, in the present case, the respondent did not assign any acceptable reason in refusing to cross-examine the above said eight persons. Therefore, with the aforesaid submissions, he sought for setting aside the impugned order.

6. Per contra, learned Senior standing counsel appearing for the respondent submitted that cross-examination of the above said eight persons by the petitioner is unnecessary, as this would result in avoidable delay and would not serve the purpose of justice. It is further submitted that the act of mis-declaration, undervaluation, suppression of facts and conspiracy has been established beyond reasonable doubt by other evidences, therefore, the petitioner has no locus-standi to corss-examine the above said eight persons.

7. This Court is unable to accept the above said contention of the counsel for the respondent. Indeed, on denial of cross-examination of the above said eight persons, counsel for the petitioner sent a letter dated 22.09.2014 to the respondent requesting permission to cross-examine the above said eight persons on the basis of Vulcan Industrial Engineering Company Limited's case (cited supra). A mere reading of the said judgment shows that it is incumbent upon the Commissioner to decide the request for cross-examination of the petitioner before finally deciding the case on merits. In this context, it is more appropriate to extract the relevant portion of the said judgment, which is as follows:

"Having heard learned counsel for the parties, we are inclined to interfere on the short ground of serious breach of principles of natural justice in the process of passing final order of adjudication. We say so because the adjudicating authority, though categorically informed by the representative of the petitioners that the petitioners are serious about exercise of their right to cross examination and further that any meaningful participation in the adjudicating proceedings can take place only after such cross examination is granted, the authority proceeded to decide such request only alongwith the final order of adjudication. Whether the petitioners had a right to seek cross examination in the facts of the present case, is not our brief at the moment. We, therefore, refuse to comment on the petitioners insistence for cross examination or authority s reluctance to grant it. What we, however, find is that the petitioners had atleast a right to be told whether such application is being granted or refused before final order was passed. When the petitioners prayed for cross examination and reasonably expected that the same would be granted, they cannot be expected to participate in the adjudicating proceedings upto the final stage. In other words, without dealing with and disposing of the petitioners application for cross examination, the adjudicating authority could not have finally adjudicated the issues. If he was of the opinion that the request for cross examination was not tenable, by giving reasons, he could have rejected it. We wonder what would have happened, if he was inclined to accept such a request. In such a situation, he himself could not have finally disposed of the show cause notice proceedings. In either case, the petitioners had a right to know the outcome of their application.

Merely because the Commissioner was of the opinion that the petitioners had made such a request somewhat belatedly, would not permit him to, in the facts of the present case, deal with such an application only in the final order itself. Sum total of this discussion is that we are inclined to set-aside the impugned order and request the adjudicating authority to pass a separate order on the petitioners application/request letter for granting cross examination of the named witnesses. We are conscious that the Commissioner has already decided

> such an issue, however, since we are quashing the order, this part of the order would also not survive and hence, the requirement of a fresh order. We are informed that the same officer continues to hold the office of the Commissioner of Customs & Central Excise, Surat-II. It would therefore, be not necessary to separately hear the petition once again before passing any such order. This would, however, not preclude the Commissioner from requiring the petitioners to show relevance for seeking cross examination of the witnesses. Once such order is passed, the Commissioner shall issue a notice to the petitioners for further hearing of the show cause notice and proceed thereafter in accordance with law."

8. While considering the value of cross-examination, the Apex Court in Ayaaubkhan Noorkhan Pathan's case (cited supra) held thus:

> "Cross-examination is one part of the principles of natural justice:
>
> 23. A Constitution Bench of this Court in State of M.P. v. Chintaman Sadashiva Vaishampayan, AIR 1961 SC 1623, held that the rules of natural justice, require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice."

A mere reading of the above said proposition clearly shows that the rules of natural justice require that a party must be given the opportunity to adduce all relevant evidence upon which he relies and further that the evidence of the opposite party should be taken in his presence by giving the opportunity of cross-examining the witnesses examined by that party. In the present case, neither any speaking order has been passed nor the respondent justified in not permitting the petitioner to cross-examine the above said eight witnesses. Thus, such attitude of the respondent shows that the petitioner was not given fair opportunity to defend their case, therefore, not providing an opportunity to cross-examine the above said eight witnesses, in my view, would violate the principles of natural justice. Accordingly, the impugned order is set aside and the respondent is directed to permit the petitioner to cross-examine the above said eight witnesses and pass appropriate orders on merits and in accordance with law. Such exercise shall be completed by the respondent within a period of 45 days from the date of receipt of a copy of this order.

9. In fine, for the reasons stated above, the writ petitions stand allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rkm

To

The Commissioner of Customs
(Seaport Exports),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

+3 cc to Mr.B.Sathish Sundar, Advocate, sr. 26173 to 26175
+1 cc to Dr.M. Devendran, Sr. Standing counsel for
customs & Excise, sr. 25980.

W.P.Nos.1477 to 1479 of 2015

kv(co)
kra(27/07)