IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15463 of 2015

MGM International Exports,
Rep. By its Senior Manager
Mr.G.Srinivasan,
1/9 Radhakrishnan Salai,
Mylapore, Chennai - 600 004. ... Petitioner

Vs.

1. The Commissioner of Customs,
Customs House,
Rajaji Salai,
Chennai - 600 001.

2. The Assistant Commissioner of Customs,
Group 1 & 2, Customs House,
Rajaji Salai,
Chennai - 600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus to direct the respondents to finalise the assessment relating to the imports in accordance with the direction of the Hon'ble First Bench in W.A.No.1450 of 2009, dated 20.11.2009 and the direction of the learned Judge in W.P.No.32961 of 2012, dated 07.01.2013, refund the deposit of Rs.22,11,379/- collected from the petitioner with interest

For Petitioner :Ms.Lakshmi Sriram

For Respondents :Mr.K.Mohanamural,
Sr.Panel Counsel

ORDER

The present writ petition is the third round of litigation seeking for the same prayer as that of the prayer made in the earlier two round of litigations viz. seeking writ of mandamus to direct the respondents to finalise the assessment relating to the imports in accordance with the direction of the Hon'ble First Bench in W.A.No.1450 of 2009, dated 20.11.2009, and the direction of the learned Judge in W.P.No.32961 of 2012, dated 07.01.2013 and thereby direct them to refund the deposit of Rs.22,11,379/- collected from the petitioner with interest.

2. It is the claim of the petitioner that the second respondent has completed provisional assessments by orders dated 18.06.1996 and 11.07.1996 respectively under the Customs Act, 1962, whereby he finalized the provisional assessments in respect of import of Superior Kerosene Oil made by the petitioner from 1994 to 1998 in respect of ten Bills of Entry. However, the grievance of the petitioner is, the second respondent has wrongly included the demurrage charges, wharrfage and stock loss under 'assessable value' and raised a demand of Rs.3,24,298/- and Rs.77,047/- by way of additional customs duty. Therefore, disputing the said charges, the petitioner preferred an appeal before the Commissioner of Customs (Appeal). The said appellate authority, by orders dated 06.09.1996 and 10.12.1996, allowed the appeals by holding that the payment of demurrage charges, wharfage and stock loss would not fall under the assessable value and thereby directed the second respondent to modify the demand and finalize the same. Aggrieved by the same, the department preferred an appeal before the Central Excise Service Tax Appellate Tribunal (CESTAT), South Zone, in appeal No.C/25/97 and C/184/97. The CESTAT, by order dated 27.05.1997, remanded the matter back to the Commissioner of Customs (Appeals). Finally, the Commissioner of Customs (Appeals), by order dated 31.03.1998, agreed with the contention of the petitioner. However, the department once again took up the matter before the CESTAT. The CESTAT passed Majority Order Nos.268 to 275 of 2005, dated 18.04.2005, giving a finding against the petitioner. Challenging the said order of the CESTAT, the petitioner had filed Writ Petition No.13584 of 2005 and this Court, by order dated 02.12.2008, dismissed the same on the ground of alternative remedy available under Section 130 of the Act. Aggrieved by the same, the petitioner preferred an appeal before this Court in W.A.No.1450 of 2009 and the Hon'ble First Bench of this Court, by order dated 20.11.2009, allowed the writ appeal directing the respondent not to include demurrage, wharffage and stock loss charges into the assessable value. However, in spite of such direction, the second respondent has not finalised the assessment of the 63 imports already made by them. Therefore, they were constrained to file another writ petition in W.P.No.32961 of 2012 seeking a direction to the respondents to finalise the assessment relating to the imports in accordance with the direction of the Hon'ble First Bench as stated supra. This Court, by order dated 07.01.2013, once again directed the second respondent to rework and finalize the assessment in terms of paragraph Nos.6 and 7 of the order passed in W.A.No.1450 of 2009, dated 20.11.2009.

3. By narrating so the facts, learned counsel contended, ironically the second respondent, in spite the above said two orders of this Court, has not passed any orders, therefore, the present writ petition has been filed by way of third round of litigation to implement the above said two orders of this Court.

4. Considering the nature of the prayer made by the petitioner as stated supra, when the matter was taken up on 02.06.2015, this Court directed the second respondent / the Assistant Commissioner of Customs, Chennai, to appear before this Court. Accordingly, today, he appeared before this Court by filing a counter affidavit. Learned standing counsel appearing for the respondents submitted that after the order passed by this Court on 20.11.2009 in W.A.No.1450 of 2009, it was found on scrutiny that the original triplicate copies of the Bills of Entries were not produced by the importer/petitioner herein, therefore, a detailed letter was sent to the petitioner on 01.03.2010 informing them about the documents required for finalizing the assessment. On receipt of the same, the petitioner also gave his reply on 05.03.2010 requesting grant of refund. Thereafter, a note was also sent to the legal section on 07.04.2010 for acceptance or otherwise of the order passed by this Court on 20.11.2009. In the meanwhile, one another order was passed by this Court on 07.01.2013 in W.P.No.32961 of 2012 directing the department to finalize the assessment and issue refund to the petitioner/importer. Thereafter, the said file was also sent to the legal section for acceptance or otherwise on 20.02.2013. In this process, it was also brought to the notice of the department that a similar case is pending before the Hon'ble Apex Court for the same importer / petitioner herein and that the Mangalore Customs was asked to inform the Chennai Custom House with respect to the case details. Subsequently, it was ascertained that both the cases were different because the case in Chennai pertained to the period from July 2001 to March 2003. Only thereafter, the order passed by this Court on 07.01.2013 in W.P.No.32961 of 2012 was accepted by the Commissioner on 18.05.2013. However, in order to finalize the assessment for which original documents were required, a letter was sent to the petitioner asking them to submit the original documents required to finalize the assessment. But, since the petitioner did not produce the original documents as required by them, they were unable to comply with the above said orders passed by this Court, he pleaded.

5. This Court, on receiving the file from the department, perused the legal opinion given by the department counsel Mr.E.Vijay Anand on 26.10.2010, whereby he opined that the department has suffered inordinate delay in preferring the

appeal before the higher Court, therefore, he has given an option either to accept the order passed by this Court or to prefer an appeal facing the risk of huge delay. It is not known whether such opinion of the department counsel accepted or not, however, from the file, it is seen that they have not preferred any appeal. Therefore, it is not known why the respondent has not immediately taken any steps to accept the order passed by this Court in W.A.No.1450 of 2009, dated 20.11.2009.

6. As a matter of fact, when the petitioner filed Writ Petition in W.P.No.32961 of 2012 seeking for a direction to the respondents to finalize the assessment relating to the imports in accordance with the direction of the Hon'ble First Bench in W.A.No.1450 of 2009, dated 20.11.2009 and refund the deposit of Rs.22,11,379/- collected from the petitioner with interest, this Court, by order dated 07.01.2013, directed the second respondent to rework and finalize the assessment without including demurrage charges, wharrfage and stock loss under the 'assessable value'. Ironically, the respondents have not even come forward to offer any explanation for non-implementation of the above said orders of this Court. Therefore, when the matter was taken up on 02.06.2015, this Court directed the second respondent to appear before this Court. Accordingly, today, Mr.K.Vijayakrishnavelan, Assistant Commissioner, Chennai / second respondent herein appeared before this Court. Learned standing counsel for the respondents stated that the second respondent cannot be held responsible for non-implementation of the order passed by this Court on 20.11.2009 in W.A.No.1450 of 2009, as he joined the office only on 01.04.2015. Therefore, this Court, by considering the fact that the second respondent has joined the duty only on 01.04.2015, is not inclined to proceed against him for non-implementation of the order passed by the Hon'ble First Bench in W.A.No.1450 of 2009, dated 20.11.2009 and one another order passed by the learned Single Judge in W.P.No.32961 of 2012, dated 07.01.2013, as admittedly the said officer was not holding the charge then. However, when the decision of the Hon'ble First Bench of this Court in W.A.No.1450 of 2009, dated 20.11.2009, settled the issue directing the second respondent not to include demurrage, wharfage and stock loss charges into assessable value of the petitioner, the respondent department, being a party to the said judgment, ought to have implemented the above said direction. More surprisingly, when the petitioner has been making various representations from March, 2010, till January, 2014, renewing the request after request to finalise the pending assessment, sadly, the respondent department has not replied positively to finalise the assessment to refund the deposit of Rs.22,11,000/- with interest with reference to the payment made along with the bills of entries at the time of import of the goods. Therefore, the inaction on the part of the respondent in not finalizing the

assessment relating to 53 imports as per the direction of the Hon'ble First Bench as stated above is highly deplorable.

7. This apart, one more disheartening fact is that the petitioner, finding that the respondents have not obeyed the order passed by the Hon'ble First Bench of this Court and refused to consider the several representations made by him, was constrained to file one another Writ Petition in W.P.No.32961 of 2012, dated 07.01.2013, seeking a peculiar prayer for a direction to the respondents to finalise the assessment relating to the imports in accordance with the direction of the Hon'ble First Bench in W.A.No.1450 of 2009, dated 20.11.2009. Although the said prayer was allowed with a direction to the second respondent to rework and finalise the assessment in terms of paragraph Nos.6 and 7 of the order passed by the Hon'ble First Bench, again, the respondent department has not implemented the said order, when they are statutorily bound by such direction.

8. In this regard, it is more appropriate to refer to a judgment of the Hon'ble Division Bench of this Court in G.Rajaram v. T.K.Rajendran, I.P.S., and others, 2010 (4) CTC 407, wherein this Court, while emphasising upon the importance of safeguarding the rule of law, held the contemnors therein guilty of contempt under the provisions of the Contempt of Courts Act, 1971. In fact, by exercising the power of the Court under Article 215 of the Constitution of India as every High Court is a superior Court of record for wilful disobedience of the Court's order, the Hon'ble Division Bench concluded that Article 215 does not restrict the power of the Court to impose punishment and thereby, came down heavily against the contemnors therein and imposed costs of Rs.1,00,000/- payable to the petitioner therein.

9. Recently, our Hon'ble First Bench of this Court in K.K.Ramesh v. the Government of Tamil Nadu (W.P.No.20002 of 2014, dated 25.08.2014), showing expressive concern on the delay and non-implementation of the Court order, has directed the Chief Secretary of this State to examine this problem and issue necessary circular to all the departments asking them to implement the Court order, by making it further clear that violation of the direction would invite administrative / disciplinary action. Such observation of the Hon'ble First Bench of this Court squarely covers the facts and circumstances of the present case.

10. Further, from the above said undisputed facts, it is clear that the petitioner has been made to fight a long

battle resulting in physical and mental harassment apart from financial implications. When a case like this absolutely warrants imposition of damages, a let-loose and slight approach would only further encourage the authorities in playing foul games even before Courts. Therefore, although this Court can direct the Government to initiate departmental action against all those officers responsible for non-compliance of the orders passed by this Court as stated supra, while refraining from doing so, this Court, falling in line with the Division Bench decision in G.Rajaram's case (cited supra), deems it fit to impose exemplary costs of Rs.1,00,000/- (Rupees one lakh) on the respondent-department and, out of such amount, Rs.50,000/- shall be paid to the petitioner towards the litigation fees and the balance amount of Rs.50,000/- shall be paid to the Tamil Nadu Mediation and Conciliation Centre, Chennai, for wasting the precious time of the Court. Accordingly, the respondents are directed to complete the said exercise within a period of four weeks from the date of receipt of a copy of this order. Needless to mention that the department is at liberty to recover the said amount from those persons who are responsible for non-implementation of the orders passed by this Court as stated above, after issuing proper notice to them.

11. With regard to refunding of the deposit amount of Rs.22,11,379/- collected from the petitioner, it is seen from the affidavit filed by the respondents that they have credited the refund amount into the petitioner's account through RTGS transfer, only on 12.06.2015, which is admittedly after the order passed by this Court on 02.06.2015 directing the second respondent to appear before this Court for non-implementation of the orders passed by this Court as stated supra.

12. In fine, for the reasons stated above, the writ petition stands allowed with costs as stated above.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Commissioner of Customs,
   Customs House,
   Rajaji Salai,
   Chennai - 600 001.

2. The Assistant Commissioner of Customs,
   Group 1 & 2, Customs House,
   Rajaji Salai,
   Chennai - 600 001.

Copy to

The secretary Tamil Nadu Mediation and centre, conciliation ,High court Madras.

+1cc to K.Mohanamuralli Advocate sr.no.30617.
+1cc to M/s.Lakshmi sriram, Advocate sr.no.30486.

ad[co]
srg 27.07